

(19,883, 19,884, 19,885, and 19,886.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 381.

LEWIS M. ALEXANDER, APPELLANT,

vs.

THE UNITED STATES.

No. 382.

GEORGE A. WHITING, APPELLANT,

vs.

THE UNITED STATES.

No. 383.

WILLIAM Z. STUART, APPELLANT,

vs.

THE UNITED STATES.

No. 384.

GENERAL PAPER COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF WISCONSIN.

JUDD & DERWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 2, 1905.

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1 Circuit Court of the United States for the Eastern District of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss :

At a special term of the circuit court of the United States for the eastern district of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday (being the third day) of July, A. D. 1905—present and presiding Honorable William H. Seaman, circuit judge—among other the following proceedings were had, to-wit :

THE UNITED STATES OF AMERICA	} In Equity. Pending in the U. S. Circuit Court for the District of Minnesota, Third Division.
vs.	
THE GENERAL PAPER COMPANY et al.	

Be it remembered that heretofore to-wit, on the 4th day of May, A. D. 1905, came the complainant, The United States of America, by its solicitors, Messrs. James M. Beck and Frank B. Kellogg, and presented to the court their petition herein filed, praying an order that subpoenas be issued for the attendance of certain witnesses before the special examiner, appointed in said cause by the U. S. circuit court for the district of Minnesota. Which petition is as follows:—

2 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, The Petoskey Fibre Paper Company, Rhineland Paper Company, Defendants.

3 Petition for *Subpoenas Duces Tecum*.

To the honorable the judges of the United States circuit court for the eastern district of Wisconsin:

Your petitioner, The United States of America, petitioner in the above entitled cause, respectfully says:

First. That the above cause is a proceeding by way of petition brought in the United States circuit court for the district of Minnesota by the United States of America against the above named defendants, under and pursuant to the provisions of the act of Congress of July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies ;"

That in and by the petition in the said cause, a copy of which is hereto attached, referred to and made a part hereof for greater certainty, it is, among other things, charged that the above named defendants, did, in or about the year 1900, in the manner and form mentioned in said petition, enter into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States, and to control, regulate and monopolize said trade and commerce in this: that the said defendants, save and excepting The General Paper Company, combined and conspired together to restrain and eliminate competition among themselves by and through the organization of a central selling agent known as The General Paper Company, another party defendant, which General Paper Company was, by various contracts and agreements thereupon made with the said other defendants, given full power and control over the product and the disposition thereof, of the defendants so contracting with it.

Second. That said cause is at issue on petition, answers and replications; that the defendants in the said cause, as more particularly appears by their respective answers, copies of which are hereto attached, referred to and made a part hereof for greater certainty, have denied the making of or entering into any combination or conspiracy as alleged in the petition, and have denied that the defendants other than The General Paper Company, have ever conferred upon the said defendant General Paper Company any power or control over their output, or any power to fix or determine prices and terms of sale of such output.

4 Third. That a special examiner has been appointed by the United States circuit court for the district of Minnesota, with full power and authority according to the rules and practice in such cases made and provided, to hold hearings and receive testimony in behalf of either party at such times and places within or without the district of Minnesota as he may designate and appoint; and that pursuant to the power and authority so vested in him, said special examiner has duly made, entered, filed and served upon the counsel for the respective parties to the cause, an order for the taking of testimony in behalf of the petitioner in said cause, before him, the said examiner, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee, and State of Wisconsin, within the eastern district of Wisconsin, at ten o'clock in the forenoon of the 16th day of May, 1905, said hearing to be continued at said place from day to day as may be hereafter by him, said examiner, ordered.

Fourth. Your petitioner further states that in order fully to de-

termine the nature and effect of said combination and conspiracy referred to in the petition, and satisfactorily and by competent and material evidence to establish the truth of the averments of said petition in that regard, it is proper, material and necessary to have summoned before the said special examiner at the hearing above mentioned, the following witnesses, and to have produced in evidence and laid before the court for its inspection, the various papers, books and documents hereinafter particularly mentioned, in the possession and under the control of said witnesses respectively.

5 Wherefore, your petitioner respectfully prays that an order may issue, directing the clerk of the circuit court of the United States for the eastern district of Wisconsin to issue under the seal of said court and to sign and to attest *subpoenas duces tecum* as follows:

To L. M. Alexander, individually and as secretary and treasurer of General Paper Company, residing at Milwaukee, Wisconsin;

George A. Whiting, individually and as vice-president of the General Paper Company, residing at Menasha, Wisconsin;

J. A. Kimberly, individually and as president of General Paper Company, residing at Neenah, Wisconsin;

W. Z. Stuart, individually and as second vice-president of the General Paper Company, residing at Chicago, Illinois; and,

John A. Davis, individually and as general sales manager of the General Paper Company, residing at Chicago, Illinois;

directing them and each of them to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the fore noon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing them and each of them to bring with them and produce at the time and place aforesaid the following books, papers and documents, to wit:

All written contracts or agreements made and entered into by and between the above named defendant, General Paper Company, and any or all of the other above named defendants in said cause, between the 1st day of May, 1900, and the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls, or in any way deals in or has sold or controlled, or in any way dealt in, the product of the said other defendants or each or any of them,

between the said 1st day of May, 1900, and the present time.

6 All stock books, stock ledgers and any and all other books of the said General Paper Company showing the ownership and distribution of the stock of said General Paper Company, from the time of its organization to the present time; and also all books or papers showing the manner and proportions in which the earn-

ings of said defendant, General Paper Company, have from the time of its organization to the present time been divided and distributed.

Any and all books, written agreements or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, from the time of its organization to the present time, over the output of any or all of the other above named defendants, whether said control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said other defendants or any of them.

Any and all books, papers, documents and correspondence in the possession or under control of the said witnesses, either individually or as officers of the defendant, General Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, General Paper Company and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre.

Any and all correspondence—letterpress copies, if any, of correspondence sent, as well as original letters or papers received—between the said defendant, General Paper Company, and each and all of the other defendants, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present time, sold or disposed of,

and does sell or dispose of, the product of the said other defendants; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

To F. J. Sensenbrenner, individually and as vice-president of the Kimberly & Clark Company, residing at Neenah, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the fore noon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into between the defendant, Kimberly and Clark Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General

Paper Company, sells or controls, or in any way deals in, or has sold or controlled, or in any way dealt in, the product of the said defendant, Kimberly and Clark Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said Kimberly and Clark Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, Kimberly and Clark Company, either in the name of the said defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, Kimberly and Clark Company, and the returns or dividends at any time received upon said stock by or for the defendant, Kimberly and Clark Company.

8 Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant, General Paper Company, to the present time, over the output of the defendant, Kimberly and Clark Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under control of the said F. J. Sensenbrenner, either individually or as an officer of the defendant, Kimberly and Clark Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Kimberly and Clark Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant, Kimberly and Clark Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letter press copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Kimberly and Clark Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant, Kimberly and Clark Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

9 To J. H. Dellbridge, individually and as secretary of the Falls Manufacturing Company, residing at Oconto Falls, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to wit:

All written contracts or agreements made and entered into between the defendant, Falls Manufacturing Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls or in any way deals in, or has sold or controlled or in any way dealt in, the product of the said defendant, Falls Manufacturing Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said Falls Manufacturing Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, Falls Manufacturing Company, either in the name of said defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, Falls Manufacturing Company, and the returns or dividends at any time received upon said stock by or for the defendant, Falls Manufacturing Company.

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time
10 of the organization of said defendant, General Paper Company, to the present time, over the output of the defendant, Falls Manufacturing Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under the control of the said H. J. Dellbridge, either individually or as an officer of the defendant, Falls Manufacturing Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Falls Manufacturing Company, and E. A. Edwards, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of butcher's fibre, or upon the compensa-

tion paid or to be paid the said defendant, Falls Manufacturing Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letterpress copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Falls Manufacturing Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant, Falls Manufacturing Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

11 To S. E. Smith, individually and as president of the Menasha Paper Company, residing at Menasha, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to wit:

All written contracts or agreements made and entered into between the defendant, Menasha Paper Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls, or in any way deals in, or has sold or controlled or in any way dealt in, the product of the said defendant, Menasha Paper Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said Menasha Paper Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, Menasha Paper Company, either in the name of the said defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, Menasha Paper Company, and the returns or dividends at any time received upon said stock by or for the defendant, Menasha Paper Company.

Any and all written agreements, books, or papers, relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant, General Paper Company, to the present time, over the output of the defendant, Menasha Paper Company, whether such control consists or has consisted in

restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under the control of the said S. E. Smith, either individually or as an officer of the defendant, Menasha Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Menasha Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant, Menasha Paper Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letterpress copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Menasha Paper Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present, sold or disposed of and does sell and dispose of the product of the said defendant, Menasha Paper Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

13 To C. W. Howard, individually and as president of the C. W. Howard Company, residing at Neenah, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the fore noon of the 16th day of May, 1905, then and there to be examined and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into between the defendant, The C. W. Howard Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls or in any way deals in, or has controlled or in any way dealt in, the product of the said defendant, The C. W. Howard Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said The C. W. Howard Company, either in his or its possession or under his or its control, showing or

tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, The C. W. Howard Company, either in the name of the said defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, The C. W. Howard Company, and the returns or dividends at any time received upon said stock by or for the defendant, The C. W. Howard Company.

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant, General Paper Company,

14 to the present time, over the output of the defendant, The C. W. Howard Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under control of the said C. W. Howard, either individually or as an officer of the defendant, The C. W. Howard Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, The C. W. Howard Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant, The C. W. Howard Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence,—letterpress copies, if any, or correspondence sent, as well, as original letters or papers received—between the said defendant, The C. W. Howard Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has, from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant, The C. W. Howard Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

15 To Henry D. Smith, individually and as president of the Riverside Fibre & Paper Company, residing at Appleton, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined and to

give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into between the defendant, Riverside Fibre & Paper Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls or in any way deals in, or has sold or controlled or in any way dealt in, the product of the said defendant, Riverside Fibre & Paper Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said Riverside Fibre & Paper Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, Riverside Fibre & Paper Company, either in the name of the said defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, Riverside Fibre and Paper Company, and the returns of dividends at any time received upon said stock by or for the defendant, Riverside Fibre & Paper Company.

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time

16 of the organization of said defendant, General Paper Company, to the present time, over the output of the defendant, Riverside Fibre & Paper Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under control of the said Henry D. Smith, either individually or as an officer of the defendant, Riverside Fibre & Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Riverside Fibre & Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant, Riverside Fibre & Paper Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letterpress copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Riverside Fibre & Paper Company, and

the defendant General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has, from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant, Riverside Fibre & Paper Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

17 To C. A. Babcock, individually and as secretary of the Wisconsin River Paper & Pulp Company, residing at Neenah, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room 314 Federal building in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the fore noon of the 16th day of May, 1905, then and there to be examined and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into between the defendant, Wisconsin River Paper & Pulp Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls or in any way deals in, or has sold or controlled or in any way dealt in, the product of the said defendant, Wisconsin River Paper & Pulp Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the said Wisconsin River Paper & Pulp Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, either in the name of the said defendant, Wisconsin River Paper and Pulp Company, or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, and the returns or dividends at any time received upon said stock by or for the defendant, Wisconsin River Paper & Pulp Company.

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant, General Paper Company, to

18 the present time, over the output of the defendant, Wisconsin River Paper & Pulp Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and

correspondence in the possession or under control of the said C. A. Babcock, either individually or as an officer of the defendant, Wisconsin River Paper & Pulp Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Wisconsin River Paper & Pulp Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid said defendant, Wisconsin River Paper & Pulp Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letterpress copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Wisconsin River Paper & Pulp Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has, from the time of its organization to the present, sold or disposed of and does sell and dispose of the product of the said defendant, Wisconsin River Paper & Pulp Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

19 To John S. Van Nortwick, individually and as vice-president and treasurer of the Combined Locks Paper Company, residing at Appleton, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into between the defendant, Combined Locks Paper Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls or in any way deals in, or has sold or controlled or in any way dealt in, the product of the said defendant, Combined Locks Paper Company, from the time of the organization of the General Paper Company to the present time.

All books and papers of the Combined Locks Paper Company, either in his or its possession or under its control, showing or tending to show the amount of the capital stock of the defendant, General Paper Company, at any time held by or for the defendant, Com-

bined Locks Paper Company, either in the name of the said defendant, Combined Locks Paper Company, or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant, Combined Locks Paper Company, and the returns or dividends at any time received upon said stock by or for the defendant, Combined Locks Paper Company.

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant, General Paper Company, to the present time, over the output of the defendant, Combined

20 Locks Paper Company, whether such control consists or consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under control of the said John S. Van Nortwick, either individually or as an officer of the defendant, Combined Locks Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, Combined Locks Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant, Combined Locks Paper Company, in connection with the manufacture and sale of butcher's fibre.

Any and all correspondence—letterpress copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant, Combined Locks Paper Company, and the defendant, General Paper Company, showing the terms and conditions upon and under which the said defendant, General Paper Company, has, from the time of its organization to the present, sold or disposed of and does sell and dispose of the product of the said defendant, Combined Locks Paper Company; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations

of prices, or directing shipments to be made.

21 To Adam W. Brown, residing at Menasha, Wisconsin; Thomas Pierson (or Pearson), residing at Appleton, Wisconsin; and, J. C. Brocklebank, residing at Chicago, Illinois; directing them and each of them to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at the U. S. commissioner's room 314 Federal building in the city of Milwaukee and State of Wisconsin, at 10 o'clock in the

forenoon of the 16th day of May, 1905, then and there to be examined and to give evidence on the part of the petitioner in the above cause.

And your petitioner will ever pray.

JAMES M. BECK,
FRANK B. KELLOGG,
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Petitioner.

22 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

VS.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

Petition.

William H. Moody, Attorney General of the United States.

Frank B. Kellogg, James M. Beck, special Assistant Attorneys General of the United States.

Charles C. Haupt, attorney of the United States for the district of Minnesota.

23 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

24

Petition.

To the judges of the circuit court of the United States for the district of Minnesota, third division :

And now comes the United States of America by Charles C. Haupt, the United States attorney for the district of Minnesota, acting under the direction of the Attorney General of the United States, and brings this its proceeding by way of petition against General Paper Company, the Itasca Paper Company, Hennepin Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, the C. W. Howard Company, the Nekoosa Paper Company, the Falls Manufacturing Company, Flambeau Paper Company, the John Edwards Manufacturing Company, the Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, the Petoskey Fibre Paper Company, and the Rhinelander Paper Company, corporations
25 duly organized as hereinafter more particularly alleged, and for its bill of complaint, on information and belief, complains and alleges :

I.

That each of the following named corporations defendants herein was, during all the times hereinafter stated, and still is, a corpo-

ration duly created and organized under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in said State, as hereinafter stated after the name of each corporation, to-wit :

- Atlas Paper Company, Appleton, Wisconsin,
 Kimberly and Clark Company, Neenah, Wisconsin,
 Riverside Fibre and Paper Company, Appleton, Wisconsin,
 Wausau Paper Mills Company, Brokaw, Wisconsin,
 Centralia Pulp and Water-Power Company, Centralia, Wisconsin,
 Combined Locks Paper Company, Combined Locks, Wisconsin,
 Dells Paper and Pulp Company, Eau Claire, Wisconsin,
 26 Grand Rapids Pulp and Paper Company, Grand Rapids,
 Wisconsin,
 Menasha Paper Company, Menasha, Wisconsin,
 The Nekoosa Paper Company, Nekoosa, Wisconsin,
 The Falls Manufacturing Company, Oconto Falls, Wisconsin,
 Flambeau Paper Company, Park Falls, Wisconsin,
 The John Edwards Manufacturing Company, Port Edwards,
 Wisconsin,
 The C. W. Howard Company, Menasha, Wisconsin,
 Wolf River Paper and Fiber Company, Richmond, Wisconsin,
 The Wisconsin River Paper and Pulp Company, Plover, Wisconsin,
 Tomahawk Pulp and Paper Company, Park Falls, Wisconsin,
 Consolidated Water Power and Paper Company, Grand Rapids,
 Wisconsin,
 Rhinelander Paper Company, Rhinelander, Wisconsin.

That each of the following named corporations, defendants
 27 herein, was, during all the times hereinafter stated, and still
 is, a corporation duly created and organized under and by
 virtue of the laws of the State of Minnesota, with its principal office
 and place of business in said State, as hereinafter stated after the
 name of each corporation, to-wit :

- The Itasca Paper Company, Grand Rapids, Minnesota,
 Hennepin Paper Company, Little Falls, Minnesota,
 Northwest Paper Company, Cloquet, Minnesota.

That the defendant The Petoskey Fibre Paper Company is, and
 during all the times hereinafter stated was, a corporation duly created
 and organized under the laws of the State of Michigan, with its
 principal office and place of business at Petoskey, Michigan.

II.

That the corporations named in the paragraph next preceding
 are, and during all times hereinafter stated were, engaged in manu-
 facturing news print, manilla, fibre, and other papers, at mills sit-
 uated at their respective principal places of business in the States
 aforesaid (the Kimberly and Clark Company having in ad-
 28 dition, mills at Kimberly, Wisconsin, and Quinnesec, Michi-
 gan), and in selling and shipping the products aforesaid to

dealers and owners and managers of newspapers and other consumers in those and other States, to-wit, the States of Illinois, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Montana, Utah, Colorado, Kansas, Nebraska, Missouri and other States west of the Mississippi river.

III.

That prior to the year 1900, and, more particularly prior to about the month of May, 1900, when the defendant, The General Paper Company, was organized, as hereinafter set forth, the aforesaid corporations, which comprise substantially all of the manufacturers of paper in the territory defined in the paragraph next preceding, were competing with each other and with the defendant The Manufacturers Paper Company in the sale and shipment of news print, manilla, fibre, and other papers, in and throughout that territory.

IV.

That in or about the month of May, in the year 1900, the defendants Kimberly and Clark Company, Atlas Paper Company, Combined Locks Paper Company, The C. W. Howard Company, 29 The John Edwards Manufacturing Company, The Nekoosa Paper Company, Centralia Pulp and Water-Power Company, Grand Rapids Pulp and Paper Company, The Wisconsin River Paper and Pulp Company, Wausau Paper Mills Company, Tomahawk Paper and Pulp Company, Dells Paper and Pulp Company, The Falls Manufacturing Company, and The Hennepin Paper Company, in violation of the provisions of sections 1 and 2, respectively, of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stats. 209), entered into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States, and to control, regulate and monopolize said trade and commerce and thereby, in conjunction and alliance with defendants who subsequently joined in the aforesaid agreement, combination and conspiracy as set forth in the paragraph next succeeding, do now control, regulate and monopolize and restrain the trade and commerce not only in the manufacture of news print, manilla, fibre, and other papers, but also the distribution, sale and shipment thereof among and throughout the States of the Union aforesaid and all States west of the Mississippi river by means 30 and in the manner following, to-wit: on or about the 26th day of May, 1900, the defendants last above named caused to be organized, under the laws of the State of Wisconsin, a corporation styled the General Paper Company, with a capital stock of one hundred thousand dollars, divided into one thousand shares, which were distributed among, and are now owned and held by, the said last named defendants and the defendants that subsequently joined in the aforesaid combination and conspiracy, as hereinafter set forth,

in proportions based, as your petitioner is informed, upon the average daily output of the mills of each defendant, which corporation, by its articles of incorporation, is authorized to become, as its principal business, the sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products by mills in the State of Wisconsin or elsewhere; and thereupon, in pursuance of a common plan and understanding, each and all of the aforesaid defendants entered into a contract and agreement with the said General Paper Company making it the exclusive selling agent for their papers and paper products, and conferring upon it absolute power to control and restrict the output of their mills, fix the price of all papers sold throughout the States aforesaid, and determine to whom and the terms and conditions upon which paper shall be sold, and into what

31 States and places it shall be shipped, and what publishers and other customers each mill shall supply.

V.

That at different times thereafter the remaining defendants engaged in the manufacture and sale of paper in the territory aforesaid, namely, The Northwest Paper Company, The Consolidated Water-Power and Paper Company, The Itasca Paper Company, The Petoskey Fibre Paper Company, The Menasha Paper Company, The Rhinelander Paper Company, The Flambeau Paper Company, and The Wolf River Paper and Fiber Company, entered into and became parties to the aforesaid agreement, combination and conspiracy; that is to say, they each and all entered into a contract and agreement with the said General Paper Company, making it the exclusive selling agent for their papers and paper products, and conferring upon it absolute power to control and restrict the output of their mills, fix the price of all paper sold throughout the States aforesaid, and determine to whom and the terms and conditions upon which paper shall be sold, and into what States and places it shall be shipped, and what publishers and other customers each mill shall supply; and in turn the defendants last above named became

32 stockholders in the said General Paper Company on the basis described in the last preceding paragraph.

VI.

That each of the said defendant companies for which the General Paper Company became, in the manner aforementioned, and is now, the general selling agent, agreed to and does pay to the said General Paper Company, for acting as its selling agent, a certain percentage upon all sales of paper manufactured by it, and that out of the amount received from this source the said General Paper Company agreed to, and does, deduct its annual expenses for the sale of the product, and the balance is divided between the said defendant companies as stockholders of the said General Paper Company.

VII.

That during all the times herein stated the Manufacturers Paper Company has been and now is a corporation duly created and organized under and by virtue of the laws of the State of New York, with its principal place of business in the city of Chicago in the State of Illinois, and that from about the year 1897 down to

33 sometime during the year 1902 (when it entered into the combination with the General Paper Company as hereinafter alleged) it was engaged in the paper business at Chicago acting as sales agent for various manufacturers of paper to the complainant unknown, for the sale of news print and other papers to the various owners and publishers of newspapers and other consumers and dealers in the States and territory hereinbefore described.

That about the year 1902 the said Manufacturers Paper Company entered into and became a party to the said combination and conspiracy, but upon exactly what terms and conditions and considerations complainant is unable to state, except that it agreed with the said General Paper Company not to compete with the said company for any business in the territory of Wisconsin or States west of the Mississippi, or to offer any paper from the East to any customer of the General Paper Company either directly or indirectly.

That thereafter and to the present time the said Manufacturers Paper Company has been a party to said combination and conspiracy and has not competed for business in the said territory.

VIII.

34 That by virtue of and through the instrumentality of the agreement, combination and conspiracy hereinbefore described, all competition in the manufacture, sale and distribution of news print, manilla, fibre and other papers in the States hereinbefore described and in all the other States west of the Mississippi river, has been suppressed and the price of all paper products greatly increased, that of news print paper in the territory aforesaid having been increased about fifty per cent.

And that no dealers or newspapers or other consumers in said territory, with the exception of certain newspaper publishers in St. Louis and Chicago, can purchase any paper except directly or indirectly through the General Paper Company, and then only upon prices and terms dictated by the latter.

In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge and decree that the combination or conspiracy hereinbefore described is unlawful, and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States, and in violation of the act of Congress of July 2, 1890, entitled: "An act to protect trade and commerce against unlawful restraints and monop-

olies," and that the defendants and each and every one of them, and their officers, directors, stockholders, agents and servants, and each and every one of them, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same, and, in addition thereto, that the several defendants be respectively enjoined as follows:

First. That the defendant The General Paper Company be enjoined from acting as the sales agent and fixing the price at which the news print, manilla, fibre and other paper of the various defendant corporations shall be sold, and the persons, corporations and newspapers to which it shall be sold, and into what States it shall be shipped and sold.

Second. That each and every of the other defendants be enjoined and restrained from continuing the said arrangement with the said General Paper Company, and from making the said General Paper Company the exclusive selling agent of the said defendants and each of them, and from authorizing the said General Paper Company to restrict the output, fix the price of and terms of sale of the product of each of the defendants' mills and manufactories, or to dictate and determine the persons, corporations or newspapers to which it shall be sold, and the States into which the same shall be shipped and sold.

36 The United States prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpoena directed to said defendants, General Paper Company, The Itasca Paper Company, Hennepin Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, The Petoskey Fibre Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Rhinelander Paper Company, and each and every of them, commanding them and each of them to appear herein and answer (but not under oath,

37 answer under oath being hereby expressly waived) the allegations contained in the foregoing petition, and abide by and perform such order or decree as the court may make in the premises, and upon the final hearing hereof to permanently enjoin the defendants as hereinbefore prayed, and pending the final hearing of this case to cause a temporary restraining order to issue, enjoining

the defendants and each of them and each of their officers, agents and servants, as hereinbefore prayed.

_____,
Attorney of the United States for the District of Minnesota.

_____,
Attorney General of the United States.

_____,
Special Assistant Attorneys General of the United States.

38 UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

Charles C. Haupt, being duly sworn, says that he is the United States attorney for the district of Minnesota, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the said bill of complaint for The United States of America, the complainant therein by the Attorney-General of the United States.

_____,
Attorney of the United States for the District of Minnesota.

Subscribed in my presence and sworn to before me this — day of December, A. D. 1904.

_____,
Clerk of the United States Circuit Court
for the District of Minnesota.

- 39 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

- 40 The joint and several answers of The General Paper Company, The Itasca Paper Company, Hennepin Paper Company, Wolf River Paper & Fibre Company, Atlas Paper Company, Kimberly & Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, and The Petoskey Fibre Paper Company to the petition and bill of complaint of The United States of America, the complainant.

These defendants now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition and bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally answering, say :

First. They severally admit their incorporation and places of business respectively, as alleged in the first paragraph of said petition and complaint.

Second. They admit the allegations contained in the second paragraph of said petition and complaint.

Third. They admit that prior to the year 1900 and prior to the month of May, 1900, these defendants and the other defendants named in the said first paragraph of said petition and complaint, were competing with each other and with the defendant Manufacturers Paper Company, in the sale and shipment of news print, manila, fibre and other papers, — and throughout the territory mentioned and described in the second paragraph of said petition and complaint, and these defendants allege that they have ever since continued to so compete and are now so competing. These defendants deny that they, with the other defendants named in the said petition and complaint, comprise substantially all of the manufacturers of paper in the territory defined in the second paragraph of said petition and complaint, but on the contrary allege that there are now and have been, since prior to the year 1900, a number of other manufacturers of paper in said territory, competing with each other and with these defendants and the other defendants named in said bill and complaint.

Fourth. The defendants Kimberly & Clark Company, Atlas Paper Company, Combined Locks Paper Company, The C. W. Howard Company, The John Edwards Manufacturing Company, The Nekeosa Paper Company, Centralia Pulp and Water-Power Company, Grand Rapids Pulp and Paper Company, The Wisconsin River Paper and Pulp Company, Wausau Paper Mills Company, Tomahawk Paper and Pulp Company, Dells Paper and Pulp Company, The Falls Manufacturing Company, and The Hennepin Paper Company, and upon information and belief the other of these answering defendants likewise deny, that the defendants specifically named in the fourth paragraph of said petition and complaint, in or about the month of May, 1900, or at any other time, entered into an agreement, combination or conspiracy with each other, or into any agreement, combination or conspiracy whatever with any person or corporation whatever, to restrain the trade or commerce among the several States, or to restrain the trade or commerce among any States whatever or within any State whatever, or to control or monopolize said trade or commerce, and that they or any of these answering defendants have ever, at any time, made, formed, or entered into any such agreement, combination or conspiracy, and these answering defendants deny that they or any of them do now control, monopolize or restrain the trade and commerce between any States whatever or within any State, either in the manufacture of news print, manila, fibre or other paper, or in the distribution, sale or shipment thereof among or throughout the States of the Union, or among or between any States whatever, or within the limits or borders of any State whatever, by any means or in any manner whatever.

These defendants admit that on or about the 26th day of May, 1900, a corporation styled the "General Paper Company" was organized under the laws of the State of Wisconsin, with a capital stock of \$100,000, divided into 1,000 shares, which corporation, by its articles of incorporation, was authorized to become, as its princi-

pal business, the sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products, by mills of the State of Wisconsin or elsewhere.

They further admit that thereafter each of these answering defendants other than said General Paper Company, separately entered into a contract with said General Paper Company, making said General Paper Company its exclusive selling agent for a definite period specified in such contract, to sell certain specified grades or descriptions of paper manufactured by the other party to such contract, to-wit, the mill so contracting, such grades or descriptions of paper comprising all box lining, hanging, novel, print, fibre and manila papers manufactured by the defendant mill so contracting.

But they deny that any defendant mill, by such contract or agreement or otherwise, ever conferred upon said General Paper Company the power to control or restrict the output of the defendant mill or mills so contracting, or to fix the price of all or any papers sold throughout the States aforesaid, or to determine to whom or the prices or conditions upon which the paper manufactured by such defendant mills or by any of them should be sold, or into what States or places it should be shipped or what publishers or other customers each mill should supply.

And these defendants allege that under such contracts, it was made the duty of the said General Paper Company to use its best efforts to keep the mill or mills owned or controlled by the other party to each of such contracts, supplied with orders for paper
43 at the best prices reasonably obtainable, and to submit all orders so obtained to the mill for which the same was taken, for its approval or rejection, and to transmit all orders received by or offered to it for a particular mill to the mill selected by the customer for the approval or rejection of such mill, to the end that each of such mills might be supplied with orders to the full extent of its capacity and the demands of the trade supplied, in the most prompt and efficient manner possible.

Save as aforesaid, these defendants deny each and every matter, allegation and charge in the fourth paragraph of said petition and complaint contained.

Fifth. They admit that each of the defendants for which the General Paper Company acts as sales agent, has agreed to and does pay to the said General Paper Company, for acting as its sales agent, a certain percentage upon all sales of paper manufactured by it, which said percentage is fixed by the terms of the aforesaid agreement made between said General Paper Company and each of these defendants.

They further admit that the profits of the business of said General Paper Company, after payment of its expenses, are divided between the stockholders of said General Paper Company in proportion to their holdings. And save and except as aforesaid, these defendants deny each and every matter, allegation and charge in the sixth paragraph of said petition and complaint contained.

Sixth. Upon information and belief these defendants admit that the Manufacturers Paper Company has been and now is a corporation duly created and organized under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, and having a branch office in the city of Chicago in the State of Illinois, as in said petition and complaint alleged.

They deny that about the year 1902, or at any other time, the said Manufacturers Paper Company entered into or became a party to any combination or conspiracy whatever with these defendants or any of them, and they deny that it was ever agreed between said

44 Manufacturers Paper Company and the General Paper Company, or between the said Manufacturers Paper Company and any of these defendants, that the said Manufacturers Paper Company should not compete with said General Paper Company or any other company or person whatever, for any business in the territory of Wisconsin or States west of the Mississippi, or for any business in any territory whatever; or that the said Manufacturers Paper Company should not offer any paper from the East or from any other section of the country whatever, to any customer of the General Paper Company, either directly or indirectly. And these defendants deny that they or any of them ever made or entered into any combination, agreement or conspiracy whatever with the said Manufacturers Paper Company respecting the manufacture, sale or distribution of paper in any territory whatever.

And save as aforesaid, these defendants deny each and every allegation, charge, matter and thing in the seventh paragraph of said petition and complaint contained.

Seventh. These defendants deny each and every matter, thing, allegation and charge in the eighth paragraph of said petition and complaint contained.

And save as aforesaid, these defendants deny each and every matter, allegation and charge in said complaint contained.

And these defendants jointly and severally deny all and all manner of unlawful combination and confederacy wherewith they or any of them are by the said bill charged, without this, that there is any other matter, charge, cause or thing in the said complainant's said petition and complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of these defendants, all of which matters or things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

[CORPORATE SEAL.]

GENERAL PAPER COMPANY,
By GEO. A. WHITING,

1st Vice President.

JAMES G. FLANDERS, Solicitor.

Attest:

45

[CORPORATE SEAL.] THE ITASCA PAPER COMPANY,
 By FRANK F. BECKER, President.
 Attest: HENRY G. BECKER, Secretary.
 [CORPORATE SEAL.] HENNEPIN PAPER COMPANY,
 By B. F. NELSON, President.
 Attest: W. ED. NELSON, Secretary.
 [CORPORATE SEAL.] WOLF RIVER PAPER AND FIBRE
 COMPANY,
 By W. C. ZUCHOW, President.
 Attest: F. D. NABER, Secretary.
 [CORPORATE SEAL.] ATLAS PAPER COMPANY,
 By S. F. SHATTUCK, Acting President.
 Attest: S. F. SHATTUCK, Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] KIMBERLY & CLARK COMPANY,
 By F. J. SENSENHAMMER,
 Vice-President.
 Attest: S. F. SHATTUCK, Secretary.
 [CORPORATE SEAL.] RIVERSIDE FIBRE AND PAPER
 COMPANY,
 By HENRY F. SMITH, President.
 Attest: W. B. MURPHY, Secretary.
 [CORPORATE SEAL.] WAUSAU PAPER MILLS COM-
 PANY,
 By WALTER ALEXANDER, President.
 Attest: W. L. EDMONDS, Secretary.
 [CORPORATE SEAL.] CENTRALIA PULP AND WATER-
 POWER COMPANY,
 By F. GARRISON, President.
 Attest: F. GARRISON, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

46

[CORPORATE SEAL.] COMBINED LOCKS PAPER COM-
 PANY,
 By WM. VAN NORTWICK,
 Acting President.
 Attest: WM. VAN NORTWICK, Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] DELLS PAPER AND PULP COM-
 PANY,
 By W. L. DAVIS, President.
 Attest: F. ROYCE, Secretary.
 [CORPORATE SEAL.] GRAND RAPIDS PULP AND PA-
 PER COMPANY,
 By C. F. KELLOGG, Vice President.
 Attest: C. F. KELLOGG, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

[CORPORATE SEAL.] MENASHA PAPER COMPANY,
 By S. E. SMITH, President.
 Attest: M. H. BALLOU, Secretary.
 [CORPORATE SEAL.] THE C. W. HOWARD COMPANY,
 By C. W. HOWARD, President.
 Attest: F. W. HAWKS, Secretary.
 [CORPORATE SEAL.] THE NEKOOSA PAPER COM-
 PANY,
 By F. GARRISON, V. President.
 Attest: F. GARRISON, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

47

[CORPORATE SEAL.] THE FALLS MANUFACTURING
 COMPANY,
 By GEO. O. BERGSTROM,
 Vice President.
 Attest: J. H. DELBRIDGE, Secretary.
 [CORPORATE SEAL.] FLAMBEAU PAPER COMPANY,
 By WM. P. HARPER, President.
 Attest: E. P. SURRY, Secretary.
 [CORPORATE SEAL.] THE JOHN EDWARDS MANU-
 FACTURING COMPANY,
 By F. GARRISON, Acting President.
 Attest: F. GARRISON, Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] THE WISCONSIN RIVER PAPER
 AND PULP COMPANY,
 By GEO. A. WHITING, President.
 Attest: C. A. BABCOCK, Secretary.
 [CORPORATE SEAL.] TOMAHAWK PULP AND PAPER
 COMPANY,
 By A. M. PRIDE, Acting President.
 Attest: A. M. PRIDE, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] NORTHWEST PAPER COMPANY,
 By R. M. WEYERHAEUSER, President.
 Attest: HUNTINGTON BAYLOR,
 Ass't Secretary.
 [CORPORATE SEAL.] CONSOLIDATED WATER POWER
 AND PAPER COMPANY,
 By FALKLAND MACKINNON,
 President.
 Attest: F. MACKINNON, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

48

[CORPORATE SEAL.] THE PETOSKEY FIBRE PAPER
 COMPANY,
 By JOHN J. REYCROFT, Vice President.

Attest :

EDWARD D. WARNER, Secretary.
 JAMES G. FLANDERS AND
 WILLIAM BRACE,
 Solicitors and Counsel for the Aforesaid
 Answering Defendants.

WINKLER, FLANDERS, SMITH, BOTTUM &
 FAWCETT AND
 DEFREES, BRACE & RITTER,
 Of Counsel.

48½ [Endorsed:] Copy. The United States of America vs. General Paper Co. *et al.* Answer of all the defendants *except* that of Manufacturers Paper Co. and Rhinelander Paper Co.

49 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

50 Answer of The Rhinelander Paper Company, One of the Above Named Defendants, to the Bill of Complaint of the Above Named Complainant, The United States of America.

This defendant, now and at all times saving and reserving unto itself all benefit and advantage of exception to the many errors, uncertainties, imperfections and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as the said defendant is advised is material for it to make answer to, answering says :

I. For answer to paragraph numbered I of said bill of complaint, this defendant admits that it is a corporation, created and organized

under the laws of the State of Wisconsin. This defendant does not know and has not been informed, save by said bill of complaint, whether its co-defendants, who are alleged by paragraph I of said bill of complaint to be corporations organized under the laws of the State of Wisconsin, are such in fact, or have any corporate existence, and neither does said defendant know, nor is it advised, save by said bill of complaint, whether its co-defendants, alleged by said paragraph numbered I of said complaint to be corporations organized under the laws of the States of Michigan and Minnesota, are such in fact, or that said defendants have any corporate existence.

II. For answer to paragraph numbered II of said bill of complaint this answering defendant admits that the parties named as defendants in paragraph numbered I of said bill were engaged in the business of manufacturing news print, manilla, fibre and other papers at their respective mills, and in marketing and selling their manufactured product in the territory alleged in said paragraph II of bill, as well as in other territory not therein described or set forth, but whether such manufacturing was done or said sales were made by said parties as individuals, firms or corporations this defendant does not know and is not informed, save by said bill of complaint. The answering defendant admits and avers that it, as a corporation, manufactured paper and sold the same wherever it could find a market therefor, and that it markets its product in the States named in said bill, as well as in other States not therein named.

III. For answer to paragraph numbered III of the bill of complaint this defendant avers that it was not organized until the year 1903, and that it does not know and has not been informed, save by said bill of complaint, as to what paper manufacturers were competing for business in the territory mentioned and described in the complaint during the year 1900.

IV. Answering paragraph numbered IV of the bill of complaint, this defendant admits that it is informed and believes that the defendant The General Paper Company, was organized during the month of May, 1900, with a capital stock of \$100,000.00, but this defendant does not know and is not advised, save by said bill of complaint, as to who the original stockholders in said corporation were, or whether or not the parties named in paragraph numbered IV of said bill of complaint as being the organizers of said corporation, organized the same or not. This defendant does not know and is not advised, save by said bill of complaint, that the parties mentioned in said paragraph numbered IV entered into any agreement, combination or conspiracy with each other to restrain trade or commerce, or to control, regulate or monopolize trade or commerce, and denies on information and belief that any agreement was made by the parties mentioned in said paragraph numbered IV that was in violation of the provisions of the act of Congress approved July 2, 1890,

ing defendant further denies that any agreement, combination or conspiracy was entered into between the parties mentioned in said paragraph IV of said bill of complaint to restrain trade or commerce among the several States, or to control, regulate or monopolize trade or commerce therein. And the answering defendant further denies that the defendants who are alleged to have organized said General Paper Company, in said paragraph IV of said bill of complaint, entered into any agreement, conspiracy or combination with other parties alleged to have subsequently joined in said unlawful agreement for the purpose of regulating, monopolizing or restraining trade or commerce, or that any agreement was made between said parties for any unlawful purpose.

Further answering said paragraph IV of said bill of complaint, this defendant does not know and is not advised who the stockholders of said General Paper Company are, or how said stock was apportioned, among the several holders thereof, and asks that said complainant be required to prove the allegations of the bill in this behalf.

Further answering said paragraph IV of said bill, this defendant admits that said General Paper Company, by its articles of incorporation, is authorized to become, and its principal business, sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products by mills in the State of Wisconsin, or elsewhere.

Further answering said paragraph IV of said bill of complaint, this defendant does not know and is not advised, except by said bill of complaint, as to whether or not all of the defendants named in said bill of complaint entered into an agreement with the General Paper Company for making it the exclusive selling agent for their papers and paper products, and on information and belief alleges that if such contracts were in fact entered into, they were not entered into as a result of any common plan or understanding between the parties finally making and constituting said General Paper Company their sales agent.

This defendant further answering said paragraph IV of said complaint denies that said defendants, or any or either of them, conferred any power upon said General Paper Company to control or restrict the output of its mills. The answering defendant denies that said General Paper Company is by it authorized to fix the price at which its paper is to be sold, or that said General Paper Company has the right to determine to whom, and what terms and conditions, its paper shall be sold, or into what States it shall be shipped, or to whom it shall be shipped; on the contrary, this defendant alleges and avers that while it is the business of said General Paper Company to solicit orders for paper and make sales thereof, and obtain reasonable prices therefor, all orders taken by said General Paper Company for the answering defendant are subject to its approval, and it has the right to reject the same for inade-

entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and on information and belief this answerquacy of price, or lack of sufficient financial standing on the part of the purchaser, or for any other good or sufficient reason.

Further answering said paragraph IV of said bill of complaint the answering defendant avers that it does not know and is not advised as to the nature of the contracts made and entered into between the General Paper Company and its co-defendants who are engaged in the business of manufacturing paper.

V. This defendant answering paragraph numbered V of the bill of complaint, states that it does not know and is not advised, save by said bill of complaint, as to whether the Northwest Paper Company, the Consolidated Water-Power Company, the Itasca Paper Company, the Petoskey Fibre Company, the Menasha Paper Company, the Flambeau Paper Company, or the Wolf River Paper and Fibre Company, entered into or became parties to any agreement with said General Paper Company, or with the corporations which it is alleged in paragraph IV of said bill caused said General Paper Company to be incorporated.

This defendant admits that during the year 1904, it entered into a contract with said General Paper Company, by the terms
54 and conditions of which contract said General Paper Company agreed to use its best efforts to sell, at the best prices obtainable and upon the best terms and conditions, any and all paper manufactured by said Rhinelander Paper Company and entrusted to it for sale by said Rhinelander Paper Company; further, that said General Paper Company should use its best efforts to keep the mills of said Rhinelander Paper Company supplied with orders that were shipped to suit the various machines in its said mills; also that said General Paper Company agreed to use its best efforts to secure and maintain harmony between said Rhinelander Paper Company and its customers; that, in consideration of such agreement on the part of said General Paper Company, said Rhinelander Paper Company on its part, agreed to pay said General Paper Company a commission of 3 per cent. on all sales effected by said General Paper Company for said Rhinelander Paper Company and approved by the latter; that said contract further provided that all sales effected by said General Paper Company for said Rhinelander Paper Company should be made and obtained subject to the approval of said Rhinelander Paper Company; that, under the terms of said contract, so long as said General Paper Company was able to secure orders sufficient to take the entire product or output of the mill of said company, said General Paper Company had the sole right to sell its product; that such contract did not exclude said Rhinelander Paper Company from selling its own paper, or selling its paper through other agencies, in the event that said General Paper Company did not furnish sufficient orders to use the entire output of said mill.

Further answering said paragraph V of said complaint, this defendant specifically denies that it ever authorized or empowered the General Paper Company to control or restrict its product, or the output of its mill, or that said General Paper Company ever exercised or assumed to exercise any such right, power or authority; denies
55 that said General Paper Company, or anybody else, ever in any manner, directly or indirectly restricted the output of the manufactured product of said Rhineland Paper Company.

This defendant admits that said General Paper Company quoted prices on paper for this defendant, but only made such quotations as were satisfactory to said defendant, and avers that the acts of said General Paper Company in making prices on paper were not different from the acts of any other agent selling merchandise for his or its principal.

Further answering said paragraph V of said bill of complaint, this defendant expressly denies that it ever became a stockholder in the General Paper Company, or that it has any financial interest, direct or remote, in said General Paper Company.

This defendant further answering said paragraph V of said bill of complaint alleges that the aforesaid contract made and entered into between it and said General Paper Company is not, as it verily believes, a contract in restraint of trade, and is not a contract that is unlawful within the meaning of any statutes of the United States or of the law of the land; that said defendant made and entered into said contract with said General Paper Company as a matter of economy, and because it believed that the price charged by said General Paper Company for marketing and selling its product was less than said defendant could sell and dispose of its manufactured product for, if it adopted any other means of selling, and the answering defendant further alleges that it entered into said contract in good faith, believing that it had the right to do so, and that it had the right to appoint any agent it saw fit to sell and dispose of its manufactured product.

VI. Answering paragraph VI of said complaint, this defendant admits that it pays to said General Paper Company, a commission upon all sales of paper made by said General Paper Company as its agent, and defendant is advised that said General Paper
56 Company likewise acts as sales agent for a large number of other mills, but just what mills said General Paper Company acts as sales agent for this defendant is not advised and does not know.

This defendant, further answering said paragraph VI of said bill of complaint, avers that it is not advised and does not know how said General Paper Company distributes the profits that it derives from the transaction of its business, but alleges on information and belief that such profits are divided among the stockholders of the

company in proportion to the amount of stock which they hold in the same.

VII. Answering paragraph VII of said bill of complaint, this defendant is not advised and does not know of the organization or of the existence of the Manufacturers Paper Company, excepting as it is advised by said bill of complaint; does not know where its place of business is, and does not know and is not advised as to any contracts that it has ever made with the General Paper Company, or any one else, or whether or not it is engaged in business at Chicago; or any other place; neither does this defendant know, nor is it advised, except by said bill of complaint, that said Manufacturers Paper Company entered into any combination or conspiracy with said General Paper Company or with any one else, or that it entered into any contract with said General Paper Company whereby it agreed not to sell paper in certain territory, or that it was ever a party to any combination or conspiracy in restraint of trade, and this defendant asks that said complainant be put to proof as to the allegations contained in paragraph VI of the bill of complaint.

VIII. Answering paragraph VIII of said bill of complaint, this defendant denies that, by means of any combination or conspiracy, or otherwise, competition has been suppressed in the manufacture, sale or distribution of news print, manilla, fibre or other papers in

57 the States mentioned in the bill of complaint, or in any other States, and this defendant further answering said bill of complaint expressly denies that the price of news print paper has been increased to the extent alleged in said bill of complaint. Defendant avers, on information and belief, that during the last few years there has been a slight increase in the price of news print paper; that there have been times in recent years, as defendant is advised and believes, when such paper was sold below the actual cost of production; that within recent years the wood out of which said paper is being manufactured is becoming scarce, and the price thereof has been continually rising; that fuel and labor, and other ingredients, have been largely increased in price in the last few years; that, in consequence thereof, manufacturers of news print paper have been obliged to increase the prices of the same to some extent, but this defendant on information and belief alleges that at no time have such prices been increased so as to yield an unreasonable margin of profit on the moneys invested in manufacturing plants by the paper-makers in the States of Wisconsin, Michigan and Minnesota.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause or thing in the said complainant's bill of complaint contained, material or necessary for the defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant, and all which matters and things this defendant is ready and willing to aver,

maintain and prove as this honorable court shall direct; and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf sustained.

RHINELANDER PAPER COMPANY,
By A. W. BROWN, President.

Attest: PAUL BROWNE, Secretary.

J. W. BARNES,
HARROLD HARRIS,
Solicitor for the Defendant
Rhineland Paper Co.

(Endorsed: Answer of the Rhineland Paper Company. Filed March 6th, 1905. Henry D. Lang, clerk. By Louise B. Trott, deputy.)

57½ [Endorsed:] Copy. United States of America vs. General Paper Co. et al. Answer of Rhineland Paper Co.

58 STATE OF MINNESOTA, }
County of Ramsey, } ss:

Frank B. Kellogg, being first duly sworn, says that he is a special assistant to the Attorney General of the United States and one of the solicitors for the petitioner in the above case; that he has read the foregoing petition, knows the contents thereof, and the statements therein contained are true;

Affiant further says that the papers, books, and documents referred to in said petition are, as he is informed and verily believes, within the possession and control of the witnesses who are respectively asked to produce them.

FRANK B. KELLOGG.

Subscribed and sworn to before me this 3rd day of May, 1905.

[SEAL.] Notary Public, Ramsey County, Minnesota.
GUY CHASE,

[Endorsed:] Copy.

59 Order that Subpoenas Issue.

On the petition hereto attached it is ordered that the clerk be and he is hereby directed to issue subpoenas as in the said petition prayed.

Dated this 4th day of May, 1905.

(Signed)

WM. H. SEAMAN,
Circuit Judge.

Whereupon subpoenas issued as prayed in said petition.

May 12, 1905.—This day came the complainant, The United States of America, by its solicitors, and presented to the court its

petition as herein filed, praying an order that subpoenas be issued for certain other witnesses before said special examiner, which petition is as follows:—

60 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

61 Petition for Subpoenas *Duces Tecum*.

To the honorable the judges of the United States circuit court for the eastern district of Wisconsin:

Your petitioner, The United States of America, petitioner in the above entitled cause, respectfully says:

First. That the above cause is a proceeding by way of petition brought in the United States circuit court for the district of Minnesota by the United States of America against the above named defendants, under and pursuant to the provisions of the act of Congress of July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

That in and by the petition in the said cause, a copy of which is hereto attached, referred to and made a part hereof for greater certainty, it is, among other things, charged that the above named defendants, did, in or about the year 1900, in the manner and form mentioned in said petition, enter into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States, and to control, regulate and monopolize said trade and commerce in this: That the said defendants, save and excepting the General Paper Company, combined and conspired together to restrain and eliminate competition among themselves by and through the organization of a central selling agent known as The General Paper Company, another party defendant, which General

Paper Company was, by various contracts and agreements thereupon made with the said other defendants, given full power and control over the product and the disposition thereof, of the defendants so contracting with it.

Second. That said cause is at issue on petition, answers and replications; that the defendants in the said cause, as more particularly appears by their respective answers, copies of which are hereto attached, referred to and made a part hereof for greater certainty, have denied the making of or entering into any combination or conspiracy as alleged in the petition, and have denied that the defendants, other than The General Paper Company, have ever conferred upon the said defendant General Paper Company any power or control over their output, or any power to fix or determine prices and terms of sale of such output.

Third. That a special examiner has been appointed by the United States circuit court for the district of Minnesota, with full power and authority according to the rules and practice in such cases made and provided, to hold hearings and receive testimony in behalf of either party at such times and places within or without the district of Minnesota as he may designate and appoint; and that pursuant to the power and authority so vested in him, said special examiner has duly made, entered, filed and served upon the counsel for the respective parties to the cause, an order for the taking of testimony in behalf of the petitioner in said cause, before him, the said examiner, at U. S. commissioner's room 314 Federal building, in the city of Milwaukee and State of Wisconsin, within the eastern district of Wisconsin, at ten o'clock in the forenoon of the 16th day of May, 1905, said hearing to be continued at said place from day to day as may be hereafter by him, said examiner, ordered.

Fourth. Your petitioner further states that in order fully to determine the nature and effect of said combination and conspiracy referred to in the petition, and satisfactorily and by competent and material evidence to establish the truth of the averments of said petition in that regard, it is proper, material and necessary to have summoned before the said special examiner at the hearing above mentioned, the following witnesses, and to have produced in evidence and laid before the court for its inspection, the various papers, books and documents hereinafter particularly mentioned, in the possession and under the control of said witnesses respectively; and in this connection your petitioner avers that the above named defendant General Paper Company has, between the first day of May, 1900, and the present time, from time to time made and entered into certain contracts with the publishers of nearly all of the leading newspapers in the Middle and Western States for the furnishing by said General Paper Company, upon the terms and conditions in said contracts stated, to the said publishers, of news print or roll print paper required by the said publishers in the publication of their respective newspapers; that the said contracts were all executed in duplicate, and one copy of each thereof duly exe-

cuted by the respective parties thereto, was retained by, and is now in the possession of the said defendant General Paper Company; that the said contracts are competent and material evidence bearing upon the issues in the said cause.

Wherefore, your petitioner respectfully prays that an order may issue, directing the clerk of the circuit court of the United States for the eastern district of Wisconsin, to issue under the seal of said court, and to sign and attest *subpoenas duces tecum* as follows:

To L. M. Alexander, individually and as secretary and treasurer of General Paper Company, residing at Milwaukee, Wisconsin; and to

John A. Davis, individually and as general sales manager of General Paper Company, residing at Chicago, Illinois, directing them and each of them, to be and attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota at United States commissioner's room 314 Federal building, in the city of Milwaukee, and State of Wisconsin, at ten o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined and to give evidence on the part of the petitioner in the above cause, and directing them, and each of them, to bring with them and produce at the time and place aforesaid, the following papers and documents, to-wit:

All written contracts or agreements made and entered into between the first day of May, 1900, and the present time, by and between the above named defendant General Paper Company, and any and all publishers of newspapers in the following named cities for the furnishing by said General Paper Company of roll print or news print paper to said publishers:

Milwaukee, Wisconsin,
Oshkosh, Wisconsin,
St. Paul, Minnesota,
Minneapolis, Minnesota,
Duluth, Minnesota,
Des Moines, Iowa,
Dubuque, Iowa,
Sioux City, Iowa,
Omaha, Nebraska,
Kansas City, Missouri,
St. Louis, Missouri,
Chicago, Illinois,
New Orleans, Louisiana,
Denver, Colorado,
Salt Lake City, Utah.

To F. D. Naber, individually and as secretary and treasurer of the Wolf River Paper and Fiber Company, residing at Shawano, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U.S. commissioner's room, 314 Federal building, in the city of Milwaukee and State of Wisconsin, at ten o'clock in the fore-

noon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents, to-wit:

65 All written contracts and agreements made and entered into between the defendant, Wolf River Paper and Fiber Company, and the General Paper Company, from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls, or in any way deals in, or has sold or controlled, or in any way dealt in the product of the said defendant Wolf River Paper and Fiber Company, from the time of the organization of the General Paper Company to the present time;

All books and papers of the said Wolf River Paper and Fiber Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant General Paper Company, at any time held by or for the defendant Wolf River Paper and Fiber Company, either in the name of the defendant or in the name of any of its officers, stockholders or agents, the amount or amounts at any time paid upon said stock either by or for the defendant Wolf River Paper and Fiber Company, and the returns or dividends at any time received upon said stock by or for the defendant Wolf River Paper and Fiber Company;

Any and all written agreements, books or papers relating to or in any way bearing upon the control of the defendant General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant General Paper Company, to the present time, over the output of the defendant Wolf River Paper and Fiber Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced by the said defendant; and any and all books, papers, documents and correspondence in the possession or under control of the said F. D. Naber, either individually

66 or as an officer of the defendant Wolf River Paper and Fiber Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant Wolf River Paper and Fiber Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of butcher's fibre, or upon the compensation paid or to be paid the said defendant Wolf River Paper and Fiber Company, in connection with the manufacture and sale of butcher's fibre;

Any and all correspondence—letter-press copies, if any, or cor-

respondence sent, as well as original letters or papers received—between the said defendant, Wolf River Paper and Fiber Company, and the defendant General Paper Company, showing the terms and conditions upon and under which the said defendant General Paper Company has from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant Wolf River Paper and Fiber Company, it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

To S. F. Shattuck, individually and as secretary of the Atlas Paper Company, residing at Appleton, Wisconsin, directing him to attend before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at the U. S. commissioner's room 314 Federal building, in the city of Milwaukee, and State of Wisconsin, at ten o'clock in the forenoon of the 16th day of May,

1905, then and there to be examined, and to give evidence
67 on the part of the petitioner in the above cause, and directing him to bring with him and produce at the time and place aforesaid the following books, papers and documents to-wit:

All written contracts or agreements made and entered into between the defendant Atlas Paper Company and the General Paper Company from the time of the organization of the latter company to the present time, showing or in any way tending to show the terms and conditions upon which the said defendant General Paper Company, sells or controls, or in any way deals in, or has sold or controlled, or in any way dealt in, the product of the said defendant Atlas Paper Company, from the time of the organization of the General Paper Company to the present time;

All books and papers of the said Atlas Paper Company, either in his or its possession or under his or its control, showing or tending to show the amount of the capital stock of the defendant General Paper Company, at any time held by or for the defendant Atlas Paper Company, either in the name of the said defendant or in the name of any of its officers, stockholders or agents, the amount, or amounts at any time paid upon said stock either by or for the defendant Atlas Paper Company, and the returns or dividends at any time received upon said stock by or for the defendant, Atlas Paper Company;

Any and all written agreements, books or paper-relating to or in any way bearing upon the control of the defendant, General Paper Company, or any or all of the other defendants, from the time of the organization of said defendant General Paper Company, to the present time, over the output of defendant Atlas Paper Company, whether such control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said defendant; and any and all

68 books, papers, documents and correspondence in the possession or under control of the said S. F. Shattuck, either individually or as an officer of the defendant Atlas Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant Atlas Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre, or upon the compensation paid or to be paid the said defendant Atlas Paper Company, in connection with the manufacture and sale of butcher's fibre;

Any and all correspondence—letter-press copies, if any, or correspondence sent, as well as original letters or papers received—between the said defendant Atlas Paper Company, and the defendant General Paper Company, showing the terms and conditions upon and under which the said defendant General Paper Company, has from the time of its organization to the present, sold or disposed of and does sell or dispose of the product of the said defendant Atlas Paper Company, it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made.

And your petitioner will ever pray.

(Signed)

JAMES M. BECK,
FRANK B. KELLOGG,
Solicitors for Petitioner.

Here follow copies of the bill of complaint of the United States of America *vs.* General Paper Company *et al.*, and answers of the defendants thereto, being the same copies which are annexed to the petition of the complainant for subpoenas filed May 4, 1905.

69

Order that Subpoenas Issue.

On the petition and affidavit hereto attached it is ordered that the clerk be and is hereby directed to issue subpoenas as in said petition prayed.

Dated this 12th day of May, 1905.

(Signed)

WM. H. SEAMAN,
Circuit Judge.

Whereupon subpoenas issued as prayed in said petition.

June 1, 1905.—Petition of the complainant by its solicitors praying an order requiring the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart to appear before the court and show cause

why they should not answer the questions and produce the books, records and other papers mentioned in said petition. Which petition is as follows :

70 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, The Petoskey Fibre Paper Company, Rhineland Paper Company, Defendants.

71 Petition for Order to Show Cause.

To the honorable the judges of the United States circuit court for the eastern district of Wisconsin :

Your petitioner, The United States of America, petitioner in the above entitled cause, respectfully says:

First. That the above cause is a proceeding by way of petition brought in the United States circuit court for the district of Minnesota, by the United States of America against the above named defendants, under and pursuant to the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies ;"

That in and by the petition in the said cause, a copy of which is hereto attached, referred to and made a part hereof for greater certainty, it is among other things charged that the above named defendants did in or about the year 1900, in the manner and form mentioned in said petition, enter into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States and to control, regulate and monopolize said trade and commerce in this: that the said defendants, save and excepting the General Paper Company, combined and conspired together to restrain and eliminate competition among themselves by and through the organization of a selling agent known as The General Paper Company, another party defendant, which General

Paper Company was by various contracts and agreements thereupon made with the said other defendants, given full power and control over the product and the disposition thereof of the defendants so contracting with it.

Second. That said cause is at issue on petition, answers and replication; that the defendants in the said cause, as more particularly appears by their respective answers, copies of which are hereto attached, referred to and made a part hereof for greater certainty, have denied the making of or entering into any combination or conspiracy as alleged in the petition, and have denied that the defendants, other than the General Paper Company, have ever conferred upon the said defendant General Paper Company any power or control over their output, or any power to fix or determine prices and terms of sale of such output.

Third. That a special examiner has been appointed by the United States circuit court for the district of Minnesota, with full power and authority, according to the rules and practice in such cases made and provided, to hold hearings and receive testimony in behalf of either party at such times and places within or without the district of Minnesota as he may designate and appoint; and that, pursuant to the power and authority so vested in him, said special examiner did duly make, enter, file and serve upon the counsel for the respective parties to the cause, an order for the taking of testimony in behalf of the petitioner in said cause, before him, the said examiner, at room 314 in the Federal building in the city of Milwaukee and State of Wisconsin, within the eastern district of Wisconsin, at ten o'clock in the forenoon of the 16th day of May 1905, said hearing to be continued at said place from day to day as thereafter by said examiner ordered; that in accordance with said order of said examiner, the taking of testimony was before him begun at the time and place above mentioned, and continued from day to day and from time to time as more particularly appears by the certified copy of the proceedings had before said examiner now on file in the office of the clerk of the United States circuit court for the eastern district of Wisconsin.

73 Fourth. That at the said hearing before the said examiner, pursuant to subpoenas *duces tecum* heretofore issued by order of the United States circuit court for the eastern district of Wisconsin, out of the office of the clerk of said court, the following named witnesses duly appeared before the said examiner:

L. M. Alexander, secretary and treasurer of the General Paper Company;

George A. Whiting, first vice-president of the General Paper Company;

W. Z. Stuart, second vice president of the General Paper Company;

J. A. Kimberly, president of the General Paper Company;

John A. Davis, general sales manager of the General Paper Company;

F. J. Sensenbrenner, vice-president of the Kimberly and Clark Company ;
J. H. Delbridge, of the Falls Manufacturing Company ;
S. E. Smith, president of the Menasha Paper Company ;
C. W. Howard, president of the C. W. Howard Company ;
Henry D. Smith, president of Riverside Fibre and Paper Company ;

C. A. Babcock, secretary of the Wisconsin River Paper and Pulp Company ;

John S. Van Nortwick, vice-president and treasurer of the Combined Locks Paper Company ;

Adam W. Brown, of Menasha, Wisconsin ;

J. C. Brocklebank, of Chicago, Illinois.

That the first witness called for examination by counsel for the petitioner was L. M. Alexander, secretary and treasurer of the defendant General Paper Company, president of the defendant The John Edwards Manufacturing Company, secretary and treasurer of the defendant The Nekoosa Paper Company, and secretary of the defendant Centralia Pulp and Water-Power Company ; that in the course of his examination by counsel for the petitioner the
74 said Alexander did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Alexander being particularly set forth in the schedule of refusals on the part of said witness Alexander hereto attached, referred to and made a part hereof.

That the second witness called for examination by counsel for the petitioner was George A. Whiting, first vice-president of the defendant General Paper Company, and president of defendant, The Wisconsin River Paper and Pulp Company ; that in the course of his examination by counsel for the petitioner the said Whiting did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Whiting being particularly set forth in the schedule of refusals on the part of said witness Whiting hereto attached, referred to and made a part hereof.

That the third witness called for examination by counsel for the petitioner was W. Z. Stuart, second vice-president of the defendant General Paper Company ; that in the course of his examination by counsel for the petitioner the said Stuart did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Stuart being particularly set forth in the schedule of refusals on the part of said witness, W. Z. Stuart, hereto attached, referred to and made a part hereof.

That all of the questions which the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart have refused and do still refuse to answer are, as your petitioner verily believes, perfectly proper, competent and material to be answered, and all of the re-

75 quests above referred to which the said witnesses, Alexander, Whiting and Stuart, have refused and do still refuse to comply with are, as your petitioner verily believes, perfectly proper to be complied with in order that all of the material facts relating to the charge set out in the bill of complaint or petition may fully appear and be laid before the court for the proper determination of said cause.

Fifth. That the record book containing the minutes of all the meetings of the board of directors and of the stockholders of the defendant General Paper Company from its organization down to the present time, was produced before the examiner by the witness L. M. Alexander, who was the secretary of said company and the custodian of said record book; that the said book was so produced by said Alexander in obedience to a *subpoena duces tecum* duly issued out of this court under the order of Honorable W. H. Seaman, United States circuit judge; that the said book contains the minutes and records of all the directors' and stockholders' meetings of the General Paper Company from the time of its organization on the 26th of May 1900, to the present time, and shows the participation by the said defendant companies, other than the General Paper Company, in the management of the said defendant General Paper Company and in the transaction of the business of the said General Paper Company, in furtherance of and in execution of the combination and conspiracy set forth in the petition herein.

Your petitioner further shows that it appears by the testimony of officials of various defendants already taken and the admission made by the defendants upon the record that each defendant, other than the General Paper Company, was in the organization and conduct of said General Paper Company allowed a representative upon the said board of directors of the General Paper Company, and that the beneficial ownership of the stock of said General Paper Company is and has been at all time since the organization thereof in the said other defendants, and apportioned among said defendants according to the average daily output of the mills owned by them respectively.

76 That the whole of said record of the meeting of the board of directors and stockholders of said General Paper Company is material, competent and proper evidence to establish the allegations of the petition herein, but that nevertheless the said Alexander while so producing said book before the examiner refused and declined so to do by counsel for the petitioner, and that said Alexander further refused to permit counsel for the petitioner to inspect the said book and read the entries therein contained, or offer the same in evidence, with the exception of certain isolated and fragmentary parts thereof, as appears by the testimony on file, and refused to permit the examiner to copy into the record many different pages of said record book which were formally offered in evidence by the counsel for the petitioner and identified and initialed by the examiner when so offered.

Your petitioner further states that it appears in the testimony on file that there was an executive committee of the said defendant General Paper Company; that the minutes of the meetings of said committee were made by and preserved under the care and control of the said witness Alexander, and that the said witness Alexander, although requested by counsel for the petitioner, refused to produce the said minutes of said executive committee for the purposes of his examination that your petitioner is informed and verily believes that the said minutes of the executive committee contain the records of the acts of the said General Paper Company relative to the transaction of the business of the General Paper Company with the other defendant companies, and in furtherance of and in execution of the combination and conspiracy set forth in the petition herein.

Your petitioner further states that it appears from the testimony on file that the manager of sales for the defendant General
77 Paper Company made reports from time to time to the stockholders of said General Paper Company, usually at the annual meetings of said stockholders; that the witness Alexander, although requested by counsel for the petitioner, refused to give any information concerning the said reports of the sales manager, save and except that the reports were made from time to time as above stated; that your petitioner is informed and believes that the said reports of the manager of sales of the defendant General Paper Company relate to the sale and disposition of the product of the defendant corporations having contracts with the defendant General Paper Company, and that said reports state when, where and on what terms and conditions, the said product of the said defendant corporations was sold or disposed of during the periods covered by the said reports respectively; and your petitioner says that the said reports are proper, competent and material evidence to establish the allegations of the petition herein.

Your petitioner further states that it appears from the testimony on file that the witness Alexander, as treasurer of the defendant General Paper Company, from time to time made reports to the stockholders and directors of the said defendant General Paper Company, and that said witness Alexander, although requested by counsel for the petitioner, did on his examination refuse to give any information concerning the said treasurer's reports or the contents thereof; that your petitioner is informed and believes that the said treasurer's reports relate to and contain information concerning the disposition of the product of the defendant corporations having contracts with the defendant General Paper Company, the prices received for such product, the expenses of the management of said defendant General Paper Company, the earnings and profits of said
78 defendant General Paper Company, and the dividends declared from time to time by the said defendant General Paper Company; and your petitioner says that the said treasurer's reports are proper, competent and material evidence to establish the allegations of the petition herein.

Your petitioner further states that it appears from the testimony on file that the witnesses L. M. Alexander and W. Z. Stuart have under their care and control and in their possession the contracts made by the defendant General Paper Company with publishers of newspapers throughout the Middle Western and Southern States, for the furnishing of news print paper to the said publishers, among others, particularly to the publishers of newspapers in the following named cities:

St. Paul, Minnesota;
Minneapolis, Minnesota;
Duluth, Minnesota;
Des Moines, Iowa;
Kansas City, Missouri;
St. Louis, Missouri;
St. Joseph, Missouri;
Sioux City, Iowa;
Atlanta, Georgia;
Omaha, Nebraska;
Denver, Colorado;
Salt Lake City, Utah;
New Orleans, Louisiana;

that said contracts show when, where, to whom, and upon what terms and conditions, a very large part of the product of the defendant corporations covered by their contracts with the defendant General Paper Company, namely: news print paper, has been sold and disposed of during the period of the existence of the defendant General Paper Company; that the said contracts are competent, necessary and material evidence bearing upon the issues in this cause; that, although requested to do so by counsel for the petitioner, the said witnesses, Alexander and Stuart, did on their examination refuse to produce the said contracts or any of them.

Sixth. That in view of the persistent refusals on the part of the said witnesses to answer the questions and to comply with the requests as aforesaid, your petitioner, by its counsel, has deemed it necessary and expedient to suspend the said examination of witnesses before said examiner, and make application to the
79 honorable judges of the circuit court of the United States for the eastern district of Wisconsin for an order requiring the said witnesses, Alexander, Whiting and Stuart, to appear before them, the said honorable judges of the United States circuit court for the eastern district of Wisconsin, to show cause why they should not be required to answer the said questions and to comply with the said requests above referred to; and, to that end, your petitioner has had filed in the office of the clerk of the United States circuit court for the eastern district of Wisconsin a complete transcript of all of the testimony taken and exhibits offered in said cause up to the time of the suspension of the said examination before said examiner on Thursday the 25th day of May, 1905, duly certified by said examiner as a true and correct copy of all of the proceedings had be-

fore him upon the subject of the examination, which said transcript of testimony and exhibits so filed in the office of the clerk of the United States circuit court for the eastern district of Wisconsin, and certified by said examiner, is hereby referred to and made a part of this petition.

Seventh. Wherefore, your petitioner respectfully prays that an order to show cause may issue out of the United States circuit court for the eastern district of Wisconsin, directing the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, and each of them, to be and appear before the said United States circuit court for the eastern district of Wisconsin, at such time and place as may by said order be fixed, then and there to show cause why they should not answer the said questions, produce the said books, records, papers, reports and contracts, and comply with the said requests hereinabove referred to; or, in the event of their continued refusals so to answer, produce or comply, why they should not stand committed for contempt of the said court; and for such other and further relief as to the court may seem just and proper.

And your petitioner will ever pray.

(Signed)

JAMES M. BECK AND
FRANK B. KELLOGG,
Solicitors for Petitioner,
The United States of America.

FRANK B. KELLOGG,
Special Assistant Attorney
General of the United States.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On the 31st day of May, 1905, personally appeared before me Frank B. Kellogg, to me known to be one of the solicitors in the above entitled cause, and being first duly sworn, the said Frank B. Kellogg said that he has read the foregoing petition and that the facts therein stated are true.

GUY CHASE,

[SEAL.]

Notary Public, Ramsey County, Minnesota.

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Schedule of Refusals.

(References are to the Typewritten Testimony.)

(A.) Witness L. M. ALEXANDER.

1. Refusal to read into the record page 70 of Petitioner's Exhibit 29. (Testimony page 16)
2. Refusal to examine Petitioner's Exhibit 29 for the purpose of ascertaining the numbers of the pages comprising the entire record

of the minutes of the meeting of the board of directors of the General Paper Company at which W. Z. Stuart was elected second vice-president. (Test. p. 17)

3. Refusal to produce the record of the meeting of the board of directors of the General Paper Company at which W. Z. Stuart was elected second vice-president. (Testimony pp. 17 & 18)

4. Refusal to state the pages of the record book, Petitioner's Exhibit 29, containing the record of the meeting of the stockholders of the General Paper Company, December 8, 1903. (Testimony pp. 19 to 21, incl.)

5. Refusal to produce for the purposes of his examination as a witness the said record book Petitioner's Exhibit 29. (Testimony pp. 21 & 22)

6. Refusal to submit to the inspection of counsel for the petitioner, the minutes of the meeting of the stockholders of the General Paper Company, December 8, 1903, found in Petitioner's Exhibit 29. (Testimony, page 21)

7. Refusal to comply with the fourth and fifth questions on page 52 of the testimony.

8. Refusal to produce pages 33 to 37 inclusive of Petitioner's Exhibit 29 offered in evidence by counsel for the petitioner. (Test. pp. 71 & 72.)

9. Refusal to read that part of Petitioner's Exhibit 29 requested in the first question on page 76 of the testimony.

82 10. Refusal to comply with the request made in the third question on page 76 of the testimony.

11. Refusal to permit counsel for the petitioner to examine the records of a certain meeting of the stockholders of the General Paper Company found in Petitioner's Exhibit 29, as requested on page 77 of the testimony.

12. Refusal to answer the first question on page 78 of the testimony.

13. Refusal to answer the second question on page 78 of the testimony.

14. Refusal to produce and submit to the examiner to be entered upon the record, pages 33 to 37 inclusive of Petitioner's Exhibit 29, offered in evidence by counsel for the petitioner. (Testimony pp. 80 & 81.)

15. Refusal to permit counsel for the petitioner to examine Petitioner's Exhibit 29, as requested in the fourth question on page 81 of the testimony.

16. Refusal to permit the examiner to initial, for identification, pages 42 to 45 inclusive of Petitioner's Exhibit 29, as requested by counsel for the petitioner on page 98 of the testimony. (See testimony pp. 98 & 99)

17. Refusal to permit counsel for the petitioner to inspect Petitioner's Exhibit 29 as requested on page 99 of the testimony, for the purpose of verifying the statement of the witness in certain particulars. (Test. pp. 99, 100 & 101)

18. Refusal to comply with the request contained in the second question on page 103 of the testimony.
19. Refusal to comply with the request contained in the third question on page 103 of the testimony.
20. Refusal to read the rest of the report of the committee, as requested in the fourth question on page 111 of the testimony.
21. Refusal to answer the third question on page 112 of the testimony.
22. Refusal to answer the fifth question on page 119 of the testimony.
- 83 23. Refusal to answer the second question on page 120 of the testimony.
24. Refusal to permit counsel for the petitioner to examine Petitioner's Exhibit 29 for the purpose of verifying the statement of the witness, as requested by counsel for the petitioner in the middle of page 123 of the testimony.
25. Refusal to answer the last question on page 123 of the testimony.
26. Refusal to answer the second question on page 163 of the testimony.
27. Refusal to answer the first question on page 164 of the testimony. (See testimony, pages 164 & 165.)
28. Refusal to answer the second question on page 165 of the testimony.
29. Refusal to answer the fourth question on page 179 of the testimony.
30. Refusal to answer the sixth question on page 179 of the testimony.
31. Refusal to answer the last question on page 179 of the testimony.
32. Refusal to answer the second question on page 180 of the testimony.
33. Refusal to answer the fourth question on page 180 of the testimony.
34. Refusal to answer the question found on page 181 of the testimony. (See testimony, page 182.)
35. Refusal to inspect Petitioner's Exhibit 29 in compliance with the request found in the last question on page 224 of the testimony.
36. Refusal to answer the last question on page 225 of the testimony. (See pages 225 & 226.)
37. Refusal to answer the second question on page 226 of the testimony.
38. Refusal to answer the fifth question on page 226 of the testimony.
39. Refusal to comply with the request in the last question on page 226 of the testimony. (See pages 226, 227 & 228.)
40. Refusal to answer the second question on page 247 of the testimony.

41. Refusal to answer the fourth question on page 247 of the testimony.

42. Refusal to produce the minutes of the meetings of the board of directors of the General Paper Company during the year 1900, offered in evidence by counsel for the petitioner. (See pages 247 & 248 of the testimony.)

43. Refusal to answer the first, second, third and fourth questions on page 248 of the testimony.

44. Refusal to answer the last question on page 249 of the testimony.

45. Refusal to answer the eighth question on page 250 of the testimony.

46. Refusal to answer the first question on page 251 of the testimony.

47. Refusal to answer the third question on page 251 of the testimony.

48. Refusal to answer the fourth question on page 252 of the testimony.

49. Refusal to answer the sixth question on page 252 of the testimony.

50. Refusal to answer the first question on page 253 of the testimony.

51. Refusal to answer the second question on page 253 of the testimony.

52. Refusal to answer the fourth question on page 253 of the testimony.

53. Refusal to answer the last question on page 253 of the testimony.

54. Refusal to answer the second question on page 254 of the testimony.

55. Refusal to answer the fourth question on page 254 of the testimony.

56. Refusal to answer the first question on page 255 of the testimony.

57. Refusal to answer the last question on page 257 of the testimony.

58. Refusal to produce the contracts with the various publishers for the sale of news print paper. (See pages 255, 256 & 257 of the testimony.)

59. Refusal to answer the fourth question on page 258 of the testimony.

60. Refusal to answer the third question on page 259 of the testimony.

61. Refusal to answer the fifth question on page 259 of the testimony.

62. Refusal to answer the sixth question on page 259 of the testimony.

63. Refusal to answer the first question on page 260 of the testimony.

64. Refusal to answer the second question on page 260 of the testimony.

65. Refusal to answer the third question on page 260 of the testimony.

66. Refusal to answer the fifth question on page 260 of the testimony.

67. Refusal to answer the seventh question on page 260 of the testimony.

68. Refusal to answer the last question on page 260 of the testimony.

69. Refusal to answer the second question on page 261 of the testimony.

85 70. Refusal to answer the fourth question on page 261 of the testimony.

71. Refusal to answer the sixth question on page 261 of the testimony.

72. Refusal to answer the last question on page 261 of the testimony. (See pages 261 & 262 of the testimony.)

73. Refusal to answer the first complete question on page 262 of the testimony.

74. Refusal to answer the third question on page 262 of the testimony.

75. Refusal to answer the fifth question on page 262 of the testimony.

76. Refusal to answer the first question on page 263 of the testimony.

77. Refusal to answer the fifth question on page 263 of the testimony.

78. Refusal to answer the last question on page 263 of the testimony. (See pages 263 & 264 of the testimony.)

79. Refusal to answer the first complete question on page 264 of the testimony.

80. Refusal to produce the minutes of the executive committee as requested in the sixth question on page 265 of the testimony.

81. Refusal to answer the last question on page 265 of the testimony.

82. Refusal to answer the second question on page 266 of the testimony.

83. Refusal to answer the third question on page 266 of the testimony.

84. Refusal to answer the fifth question on page 266 of the testimony.

(B.) Witness GEORGE A. WHITING.

1. Refusal to answer the fifth question on page 277 of the testimony.

2. Refusal to answer the ninth question on page 278 of the testimony.

3. Refusal to answer the first question on page 281 of the testimony.

4. Refusal to answer the sixth question on page 289 of the testimony.

5. Refusal to answer the fourth question on page 290 of the testimony.

6. Refusal to answer the second question on page 307 of the testimony.

7. Refusal to answer the fourth question on page 307 of the testimony.

8. Refusal to answer the second question on page 309 of the testimony.

86 9. Refusal to answer the first question on page 311 of the testimony.

10. Refusal to answer the third question on page 311 of the testimony.

11. Refusal to answer the seventh question on page 311 of the testimony.

12. Refusal to answer the sixth question on page 312 of the testimony.

13. Refusal to answer the seventh question on page 312 of the testimony.

14. Refusal to answer the tenth question on page 312 of the testimony.

15. Refusal to answer the last question on page 312 of the testimony. (See pages 312 & 313.)

16. Refusal to answer the last question on page 316 of the testimony. (See pages 316 & 317.)

17. Refusal to answer the first question on page 318 of the testimony.

18. Refusal to answer the second question on page 318 of the testimony.

19. Refusal to answer the tenth question on page 318 of the testimony.

20. Refusal to answer the last question on page 318 of the testimony. (See pages 318 and 319.)

21. Refusal to answer the ninth and tenth questions on p. 320 of the testimony.

22. Refusal to answer the last question on page 320 of the testimony. (See pages 320 and 321.)

23. Refusal to answer the second question on page 321 of the testimony.

24. Refusal to answer the third question on page 322 of the testimony.

25. Refusal to answer the third question on page 321 of the testimony.

26. Refusal to answer the fourth question on page 334 of the testimony.

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(C.) Witness W. Z. STUART.

1. Refusal to answer the eleventh question on page 357 of the testimony.
2. Refusal to answer the twelfth question on page 357 of the testimony.
3. Refusal to answer the first question on page 358 of the testimony.
4. Refusal to answer the third question on page 358 of the testimony.
5. Refusal to answer the fourth question on page 358 of the testimony.
6. Refusal to answer the fifth question on page 358 of the testimony.
7. Refusal to answer the first question on page 359 of the testimony.
8. Refusal to answer the second question on page 359 of the testimony.
9. Refusal to answer the third question on page 359 of the testimony.
10. Refusal to answer the fourth question on page 359 of the testimony.
11. Refusal to answer the fifth question on page 359 of the testimony.
12. Refusal to answer the sixth question on page 359 of the testimony.
13. Refusal to answer the first question on page 360 of the testimony.
14. Refusal to answer the second question on page 360 of the testimony.
15. Refusal to answer the third question on page 360 of the testimony.
16. Refusal to answer the fourth question on page 360 of the testimony.

Here follows a copy of the original petition filed by the United States against The General Paper Co. *et al.* in the U. S. circuit court for the district of Minnesota, and also copies of the answers of the defendants thereto and which are the same as the copies annexed to the petition praying that subpoenas issue.

87½ [Endorsed:] United States circuit court, district of Minnesota, third division. United States vs. General Paper Co. *et al.* Schedules of refusals. L. M. Alexander, George W. Whiting, W. Z. Stuart.

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Order to Show Cause.

On the petition hereto attached and it appearing to the court that the said witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart, in said petition mentioned, were heretofore duly served with *subpoenas duces tecum* issued out of this court, requiring them and each of them to appear before said examiner in said cause, as in said petition stated, it is

Ordered that the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, be and appear before the Honorable William H. Seaman, judge of the United States circuit court for the eastern district of Wisconsin, at the United States court room in the city of Milwaukee and State of Wisconsin, on the 6th day of June, 1905, at 10 o'clock in the forenoon of said day, then and there to show cause why they and each of them should not make full and proper answer to each of the questions referred to in said petition and more particularly in the schedule thereunto annexed, and also fully comply with each and every of the requests mentioned in said petition and more particularly set forth in the schedule thereunto annexed; and also produce, for the purposes of their said examination, for inspection by counsel for the petitioner and for the purpose of being offered in evidence in the said cause, the books, records, papers, reports and contracts particularly referred to in the said petition and schedule; and abide by such other and further order as this court may make.

It is further ordered that a copy of this order, with the said petition and schedule thereto attached, be personally served upon the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, and upon their attorneys, Winkler, Flanders, Smith, Bottum & Fawsett, and Defrees, Brace and Ritter, on or before the 3rd day of June, 1905.

(Signed)

WM. H. SEAMAN,
United States Circuit Judge.

Dated this 1st day of June, 1905.

89 Marshal's Return of Service of Order to Show Cause of
June 1st.UNITED STATES OF AMERICA, } ss :
Northern District of Illinois,

I have served this writ within my district by delivering a true copy thereof to W. Z. Stuart on June 2nd, 1905.

(Signed)

JOHN C. AMES, U. S. Marshal,
By WILLIAM H. GRIFFITH, Deputy.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss :

I do hereby certify and return that on June 3rd, at Neenah, Wisconsin, I served the within order on the within named George A. Whiting by then and there delivering to and leaving with him personally a true copy thereof.

(Signed)

THOMAS B. REID,
U. S. Marshal,
By E. H. GLANTZ, Deputy.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss :

I hereby certify and return that I served the within order on the within named L. M. Alexander by delivering to him personally a copy of said order this 3rd day of June, A. D. 1905.

THOMAS B. REID,
U. S. Marshal.
W. N. DURBIN, Deputy.

We hereby acknowledge service of the petition and order to show cause hereto annexed in the above entitled action this 2d day of June, 1905.

(Signed)

JAMES G. FLANDERS,
WM. BRACE,
By J. G. FLANDERS.

90 June 14, 1905.—Answer of L. M. Alexander to the petition of the complainant requiring him to show cause, &c., filed as follows:

Answer.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA }
vs.
L. M. ALEXANDER. }

And now comes L. M. Alexander, the above named respondent, and for separate answer to the petition exhibited against him in this court says:

That he admits that a cause is now pending in the circuit court of the United States for the district of Minnesota upon a petition filed on behalf of the United States of America against the several corporations therein named, of which petition a copy is annexed to

said petition exhibited against this respondent in this court, and that answers to said petition were filed in the circuit court of the United States for the district of Minnesota, of which also copies are annexed to the petition filed against this respondent.

Respondent further admits that a special examiner has been appointed to take testimony in said cause and that a number of witnesses, including this respondent, were subpoenaed to appear before such examiner at the city of Milwaukee in the eastern district of Wisconsin and give testimony therein and to produce certain books and papers.

Respondent further admits that he appeared before the said examiner and gave testimony and that he refused to answer certain questions and to comply with certain requests of the examining counsel for complainant to the effect that he submit books and papers to his perusal and examination or publicly read therefrom in the presence of said examiner. But respondent denies that such refusals were contrary to law or the practice of this court, and to the contrary thereof this respondent alleges, upon information and belief, that none of the said questions he refused to answer were material or relevant to said cause or to the issues therein, or were

91 competent or proper questions which it was the duty of this respondent to answer, and that none of said requests to produce books and papers or to read therefrom were material or relevant to said cause or to the issues therein, or were competent or proper requests which it was the duty of this respondent to comply with; all of which will more fully and at large appear by said examination.

Respondent further answering says that the books and records he was asked to produce and submit to the inspection of complainant's counsel or to read from were not the books and records of this respondent but the books and records of The General Paper Company, one of the defendants in said cause, and that said General Paper Company objected, and still objects, and, as this respondent is advised and informed and believes, has the right to object to the submission of its books and papers to the search of complainant's counsel; that said books and records contain matters of importance relating to the business of said corporation, in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of said corporation and other of the defendants to said action to make public; and this respondent submits that he ought not to be required to disclose any portions of said books and records except on a proper showing that the same are material to said cause to establish some issue therein and that the same are not privileged for the protection of said corporation.

Respondent further says, upon information and belief, that the State of Wisconsin, through its attorney general, has threatened and does now threaten to institute proceedings under the laws of said State to annul the charter of said General Paper Company upon some alleged ground stated in the aforesaid petition; and this re-

Respondent says that said corporation claims that as a matter of privilege it cannot be required, and its officers cannot be required, to furnish evidence of matters which may subject it to the forfeiture of its charter.

Respondent further says that all the matters in regard to which he was interrogated and which he refused to answer (except 92 certain questions as to matters which occurred long before the organization of the General Paper Company and have no relation whatever to the issues in said cause) have come to his knowledge exclusive as an officer of the General Paper Company and that in the interests and as matter of privilege on the part of the said General Paper Company he cannot be and ought not to be required to disclose the same.

Respondent further alleges that the contracts and agreements between the General Paper Company and others of the defendants, which complainant alleges constitute an unlawful combination in restraint of trade, and proceedings under which it is the object and purpose of the suit brought by the complainant to enjoin, constitute property and property rights belonging to said General Paper Company of great value and upon the continued existence of which depends in large measure the value of the stock of said General Paper Company: all of which appears by the pleadings and evidence in said suit.

Respondent further alleges that he is a stockholder of said General Paper Company owning sixty (60) shares of stock therein at the par value of six thousand dollars (\$6000.00) and that he is also a stockholder in the John Edwards Manufacturing Company and the Nekoosa Paper Company, two of the defendants in said suit.

Wherefore respondent asks that the order to show cause filed herein be dismissed.

L. M. ALEXANDER,
Respondent.

EASTERN DISTRICT OF WISCONSIN, ss :

L. M. Alexander of the city of Milwaukee in said district says that he is the respondent making the foregoing answer and that said answer is true to his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

L. M. ALEXANDER.

Subscribed and sworn to before me this 14th day of June, 1905.

[NOTARIAL SEAL.]

CHAS. E. WILD,
Notary Public, Wisconsin.

93 June 14, 1905.—Answer of George A. Whiting to the petition of the complainant requiring him to show cause &c., filed as follows:—

Answers.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA }
 vs.
 GEORGE A. WHITING. }

And now comes George A. Whiting, the above named respondent, and for a separate answer to the petition exhibited against him in this court says,

That he admits that a cause is now pending in the circuit court of the United States for the district of Minnesota upon a petition filed on behalf of the United States of America against the several corporations therein named, of which petition a copy is annexed to said petition exhibited against this respondent in this court, and that answers to said petition were filed in the circuit court of the United States for the district of Minnesota, of which also copies are annexed to the petition filed against this respondent.

Respondent further admits that a special examiner has been appointed to take testimony in said cause and that a number of witnesses, including this respondent, were subpoenaed to appear before such examiner at the city of Milwaukee in the eastern district of Wisconsin and give testimony therein and to produce certain books and papers.

Respondent further admits that he appeared before said examiner and gave testimony and that he refused to answer certain questions of examining counsel for complainant; but respondent denies that such refusals are contrary to law or the practice of this court, and to the contrary thereof he alleges, upon information and belief, that none of said questions he refused to answer were material or relevant to said cause or to the issues therein, or were competent
 94 or proper questions which it was the duty of this respondent to answer, and that much of the matter enquired of by the questions which respondent declined to answer was, in fact, fully and completely answered by this respondent in answer to other interrogatories put to him: all of which will more fully and at large appear by said examination.

Wherefore respondent asks that the order to show cause filed herein be dismissed.

GEORGE A. WHITING,
 Respondent.

EASTERN DISTRICT OF WISCONSIN, ss :

George A. Whiting, being first duly sworn, says that he is the respondent making the foregoing answer and that said answer is true.

to his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

GEORGE A. WHITING.

Subscribed and sworn to before me this 14th day of June, 1905.
[NOTARIAL SEAL.] JOHN H. HURLEY,

Notary Public, Wisconsin.

95 June 14, 1905.—Answer of W. Z. Stuart to the petition of the complainant requiring him to show cause &c. filed as follows:

Answer.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA }
VS.
W. Z. STUART. }

And now comes W. Z. Stuart, the above named respondent, and for separate answer to the petition exhibited against him in this court says,

That he admits that a cause is now pending in the circuit court of the United States for the district of Minnesota upon a petition filed on behalf of the United States of America against the several corporations therein named, of which petition a copy is annexed to said petition exhibited against this respondent in this court, and that answers to said petition were filed in the circuit court of the United States for the district of Minnesota, of which also copies are annexed to the petition filed against this respondent.

Respondent further admits that a special examiner has been appointed to take testimony in said cause and that a number of witnesses, including this respondent, were subpoenaed to appear before such examiner at the city of Milwaukee in the eastern district of Wisconsin and give testimony therein and to produce certain books and papers.

Respondent further admits that he appeared before the said examiner and gave testimony and that he refused to answer certain questions and to comply with certain requests of the examining counsel for complainant to the effect that he submit books and papers to his perusal and examination or publicly read therefrom in the presence of said examiner. But respondent denies that such refusals were contrary to law or the practice of this court, and to the contrary thereof this respondent alleges, upon information and belief, that none of the said questions he refused to answer were material or relevant to said cause or to the issues therein, or were competent or proper questions which it was the duty of this respondent to answer, and that none of said requests to

produce books and papers or to read therefrom were material or relevant to said cause or to the issues therein, or were competent or proper requests which it was the duty of this respondent to comply with: all of which will more fully and at large appear by said examination.

Respondent further answering says that the books and records he was asked to produce and submit to the inspection of complainant's counsel or to read from were not the books and records of this respondent but the books and records of The General Paper Company, one of the defendants in said cause, and that said General Paper Company objected, and still objects, and, as this respondent is advised and informed and believes, has the right to object to the submission of its books and papers to the search of complainant's counsel; that said books and records contain matters of importance relating to the business of said corporation, in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of said corporation and other of the defendants to said action to make public; and this respondent submits that he ought not to be required to disclose any portions of said books and records except on a proper showing that the same are material to said cause to establish some issue therein and that the same are not privileged for the protection of said corporation.

Respondent further says, upon information and belief, that the State of Wisconsin, through its attorney general, has threatened and does now threaten to institute proceedings under the laws of said State to annul the charter of said General Paper Company upon some alleged ground stated in the aforesaid petition; and this respondent says that said corporation claims that as a matter of privilege it cannot be required, and its officers cannot be required, to furnish evidence of matters which may subject it to the forfeiture of its charter.

Respondent further says that all the matters in regard to which he was interrogated and which he refused to answer (except
97 certain questions as to matters which occurred long before the organization of the General Paper Company and have no relation whatever to the issues in said cause) have come to his knowledge exclusively as an officer of the General Paper Company and that in the interests and as matter of privilege on the part of the said General Paper Company he cannot be and ought not to be required to disclose the same.

Respondent further alleges that the contracts and agreements between the General Paper Company and others of the defendants which complainant alleges constitute an unlawful combination in restraint of trade, and proceeding under which it is the object and purpose of the suit brought by the complainant to enjoin, constitute property and property rights belonging to said General Paper Company of great value and upon the continued existence of which depends in large measure the value of the stock of said General Paper

Company: all of which appears by the pleadings and evidence in said suit.

Wherefore respondent asks that the order to show cause filed herein be dismissed.

W. Z. STUART,
Respondent.

EASTERN DISTRICT OF WISCONSIN, ss:

W. Z. Stuart, being duly sworn, says that he is the respondent making the foregoing answer and that said answer is true to his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

W. Z. STUART.

Subscribed and sworn to before me this 14th day of June, 1905.

CHAS. E. WILD,
Notary Public, Wisconsin.

[NOTARIAL SEAL.]

98 THE UNITED STATES OF AMERICA }
vs. } In Equity.
GENERAL PAPER COMPANY ET AL. }

Before the Honorable Wm. H. Seaman, Circuit Judge.

June 6, 1905.—This day came the parties by their counsel, Mr. Frank B. Kellogg and Robert E. Olds appearing for the United States, and Messrs. James G. Flanders, F. C. Winkler and William Brace for the respondents and the order on the witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart, to show cause why they should not answer the questions referred to in the petition herein filed and also produce for inspection the books with records and papers, &c. therein mentioned, came on to be heard and was argued by said counsel and the hearing not being concluded, the same was adjourned until tomorrow morning.

June 7, 1905.—This day came the parties by their counsel and the hearing of the order on the witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart, to show cause why they should not answer the questions and produce the books, records and papers mentioned in the petition herein was resumed and not being concluded the same was adjourned until Wednesday the fourteenth day of June inst.

June 14, 1905.—This day came the parties by their counsel and the hearing of the order on the witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart to show cause why they should not answer the questions and produce the books, records and papers mentioned in the petition herein was resumed and not being concluded the same was adjourned until tomorrow morning.

99 June 15, 1905.—This day came the parties by their counsel and the hearing of the order on the witnesses L. M. Alexan-

der, George A. Whiting and W. Z. Stuart to show cause why they should not answer the questions and produce the books, records and papers mentioned in the petition herein was resumed and being concluded the court took the same under consideration.

100 United States Circuit Court, Eastern District of Wisconsin.

UNITED STATES
vs.
GENERAL PAPER COMPANY ET AL. }

JUNE 17, 1905.

On application to compel witnesses to testify and produce documents before an examiner in a civil action brought and pending in the circuit court of the United States for the district of Minnesota under the provisions of the so-called anti-trust congressional act of July 2, 1890.

SEAMAN, Judge:

The questions involved in this application are important to the parties and controversy involved, and are interesting in a general sense and in some aspects not free from difficulty. While the arguments have covered wide range with numerous citations in point upon the various propositions, I am satisfied that the questions of privilege under the fourth and fifth constitutional amendments are the only ones not plainly met by the general consensus of authority.

In the examinations no question of privilege was raised—in fact was expressly repudiated in at least one instance—and the general objection of irrelevancy was the sole ground stated for refusal to answer or produce documents. While the inquiry whether the matter sought is in any sense relevant to the controversy may arise in an application of this nature, the impertinence of a question must be very plain to justify refusal to answer before an examiner, and the ordinary tests of materiality are not applicable. The
101 objections are to be preserved, but the materiality is for consideration by the trial court and not the examiner; and the court from which the subpoena issues will rarely pass upon such objections by way of supervision—certainly not when fairly debatable. The objections which are thus brought do not impress me as entitled to consideration in detail on the present application, and will be treated as overruled upon the ground stated. Those in reference to dividends and contracts with newspapers are earnestly pressed, and if it were unmistakable that the inquiries were in no view relevant, the objections would be sustained. But without intimation in any sense upon the merits of the controversy, I cannot so rule.

The question of privilege, however, is raised by answers filed to

the applications and its solution is called for to frame such order as must be entered. The inquiry as presented is in two branches one of personal privilege of the witnesses respectively, and the other of the defendant corporation.

1. In all the interrogatories addressed to the witnesses for information within their personal knowledge, apart from the production of records and documents, I am of opinion that the only constitutional privilege which can be involved is personal and cannot extend to the corporation or be invoked on its behalf. The fact that he is an officer of the corporation and in that relation acquired the information sought, whether confidential or not, does not affect the privilege of a witness under consideration. Upon this branch of the inquiry the case of *Davis v. Lincoln National Bank*, 4 N. Y. Supp. 373, is not applicable; and if it were the decisions by the Supreme Court, that the privilege is personal only, must control. The test to be applied, therefore, is whether the immunity or amnesty granted under the act of Congress in question is as broad as the privilege granted under the constitution. As the amnesty

102 provision in the act is identical with the like provision in the inter-state commerce act which is construed in *Brown v. Walker*, 161 U. S. 591, and *Inter-State Commerce Comr. v. Baird*, 194 U. S. 25, I am constrained to adopt that interpretation, and rule that the immunity is sufficient to remove the privilege. The contention that the provision in the inter-state commerce act which makes the giving of testimony compulsory (not appearing in the anti-trust act) differentiates its construction, seems to me without force, as that provision merely imposes the duty to testify before a non-judicial tribunal, while the duty to testify in this judicial proceeding arises both at common-law and under the general statutes. Under the decisions referred to the court is not at liberty to consider the interests of the witnesses as stockholders in the constituent corporations by way of limitation of privilege or immunity.

2. The two-fold questions (!), whether the General Paper Co. is not entitled to the privilege in respect of records and documents, produced by its officers, and (2) whether the immunity provision is completely applicable in such event, are not so readily solved. No difficulty appears in answering the one, that in such evidentiary matters the privilege inures to the corporation, and not to the officer who thus represents it as custodian of the documents. The corporation can neither take the witness stand nor appear except through a representative, and the witness in such case represents alone the corporate duties and rights and not his own. So viewed, is commensurate immunity extended to the corporation by the terms of this act? Does it cover its liabilities to prosecution or forfeiture under State as well as Federal authority? If these questions fairly remained open to consideration in this inquiry, I should hesitate to pass upon them without reviewing the objects of the constitutional provisions and the long line of authorities cited thereupon.

103 The doctrine, however, which is upheld in the line of cases referred to under the inter-state commerce act, is, as it seem

to me decisive of the interpretation that the immunity extends to the corporation-defendants, and must be treated as complete in its operation. The anti-trust act is recognized under all the authorities as founded alone on the powers of Congress in reference to interstate commerce, and no escape appears from the conclusion that its amnesty proviso is coextensive with those of the companion act so founded.

I am of opinion, therefore, that the records and documents are subject to production and use in evidence, but without disturbing their custody, unless special cause shall appear.

An order will enter in conformity with these views.

104 July 6, 1905.—Second answer of L. M. Alexander to order to show cause of June 1, 1905, filed as follows:

Second Answer.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes L. M. Alexander and answering the order to show cause made in the above entitled matter and the petition heretofore filed in said matter by said complainant, upon which petition said order to show cause was made, alleges and shows unto the court as follows:—

That this respondent is the secretary of General Paper Company, one of the defendants in the above entitled matter, and as such secretary, and not otherwise, is one of the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause and in the petition and schedules attached to the petition upon which said order to show cause was made and that the same are the books, records, papers, reports and contracts of said General Paper Company and not of this respondent and are subject to the control of said General Paper Company and not of this respondent; that said General Paper Company has objected and does object and this respondent has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

105 First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not

been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of said General Paper Company in no way bearing upon or touching the issues in said cause which it would be highly injurious to the business interests of said General Paper Company and the other defendants in said cause to make public and this respondent submits that he ought not to be required to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel said General Paper Company and this respondent as its secretary to furnish to said complainant evidence tending to establish that said General Paper Company has been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 and the acts amendatory thereof or supplemental thereto, as is more fully

106 set forth in said complainant's original petition or bill of complaint in said cause, and to subject said General Paper Company to the penalties for such violations imposed by said act, and that to compel the production by said General Paper Company, through its officers, or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said General Paper Company, be violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through its officers or otherwise, to produce said books, records, papers, reports and contracts for inspection and introduction as evi-

dence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court
107 of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel the production by said General Paper Company, through its officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization
108 of said General Paper Company and have no relation whatever to the issues in the cause aforesaid, came to this respondent's knowledge exclusively as secretary of said General Paper Company in the conduct of matters entrusted to him as such secretary by said General Paper Company and which said General Paper Company, from the nature of the case, was compelled to entrust to this respondent as such secretary, and that said General Paper Company has objected and does object and this respondent has objected and does object to said questions and to the same being answered by him for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say :

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said General Paper Company, through this respondent as its secretary, to furnish to said complainant evidence tending to establish that said General Paper Company has been guilty of certain violations of the acts of Congress above referred to and to subject said General Paper Company to the penalties for such violations imposed by said acts, and that to compel said General Paper Company through this respondent as its secretary to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed

109 by said General Paper Company, violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through this respondent as its secretary, to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel it, through this respondent as its secretary, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover

110 any fact, either by producing documents or answering questions, which may subject him, either directly or eventually

to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges that he ought not to be required to answer the questions or comply with the requests or produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say:

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be contrary to the provisions here-
111 inbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company complained of by the complainant in its said original petition and bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said defendant, involve certain violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeiture under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That this respondent is a stockholder of said General Paper Company, owning sixty (60) shares of stock therein of the par value of six thousand dollars (\$6000.00), and as such stockholder is personally interested in the business of said General Paper

Company, and that all the matters which it has been above alleged would be injurious to the business interests of said General Paper Company or would result in injury, damage and loss to said General Paper Company would also be highly injurious to the business interests of this respondent personally and would result in great injury, damage and loss to him personally and that he ought not to be compelled to answer the questions or comply with the requests above mentioned or to produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts above referred to for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Wherefore this respondent asks that said order to show cause be dismissed.

(Signed)

L. M. ALEXANDER.

WINKLER, FLANDERS, SMITH, BOTTUM &

FAWSETT AND

DEFREES, BRACE & RITTER,

Solicitors for L. M. Alexander.

STATE OF WISCONSIN,
Eastern District of Wisconsin, County } as:
of Milwaukee,

L. M. Alexander being first duly sworn, deposes and says that he is the respondent making the foregoing answer; that he has read said answer and knows the contents thereof and that the same is true to his own knowledge except as to matters therein set forth on information and belief, and as to the same he believes it to be true.

(Signed)

L. M. ALEXANDER.

Subscribed and sworn to before me, this 6th day of July, A. D. 1905.

EDWARD KURTZ, Clerk.

113 July 8, 1905.—Second answer of George A. Whiting to order to show cause of June 1, 1905, filed as follows:

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes George A. Whiting and answering the order to show cause made in the above entitled matter and the petition heretofore filed in said matter by said complainant, upon which petition said order to show cause was made, alleges and shows unto the court as follows:

That this respondent is the first vice-president of General Paper Company, one of the defendants in the above entitled matter, and as such first vice-president, and not otherwise, is one of the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause and in the petition and schedules attached to the petition upon which said order to show cause was made and that the same are the books, records, papers, reports and contracts of said General Paper Company and not of this respondent and are subject to the control of said General Paper Company and not of this respondent; that said General Paper Company has objected and does object and this respondent has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

114 First. That the materiality of said books, records, papers reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of said General Paper Company in no way bearing upon or touching the issues in said cause which it would be highly injurious to the business interests of said General Paper Company and the other defendants in said cause to make public and this respondent submits that he ought not to be required to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the

inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel said General Paper Company and this respondent as its first vice-president to furnish to said complainant evidence tending to establish that said General Paper Company has been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause; and to subject said

General Paper Company to the penalties for such violations
115 imposed by said act, and that to compel the production by said General Paper Company, through its officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said General Paper Company, be violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through its officers or otherwise, to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements
116 now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment of and injunction from

carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel the production by said General Paper Company, through its officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, came to this respondent's knowledge exclusively as first vice-president of said General Paper Company in the conduct of matters entrusted to him as such first vice-president by said General Paper Company and which said General Paper Company, from the nature of the case, was compelled to entrust to this respondent as such first vice-president, and that said General Paper Company has objected and does object and this respondent has objected and does object to said questions and to the same being answered by him for
117 reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say :

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said General Paper Company, through this respondent as its first vice-president, to furnish to said complainant evidence tending to establish that said General Paper Company had been guilty of certain violations of the acts of Congress above referred to and to subject said General Paper Company to the penalties for such violations imposed by said acts, and that to compel said General Paper Company through this respondent as its first vice-president to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by said

General Paper Company, violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through this respondent as its first vice-president, to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

118 Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel it, through this respondent as its first vice-president, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges that he ought not to be required to answer the questions or comply with the requests to produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say:

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for
119 the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this

respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company complained of by the complainant in its said original petition and bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said defendant, involve certain violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeitures under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

120 Wherefore this respondent asks that said order to show cause be dismissed.

GEO. A. WHITING.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for Geo. A. Whiting.

STATE OF WISCONSIN,
Eastern District of Wisconsin, County } ss :
of Milwaukee,

George A. Whiting, being first duly sworn, deposes and says that he is the respondent making the foregoing answer; that he has read said answer and knows the contents thereof and that the same is true to his own knowledge, except as to matters therein set forth on information and belief, and as to the same he believes it to be true.

GEORGE A. WHITING.

Subscribed and sworn to before me this 6th day of July, A. D. 1905.

[NOTARIAL SEAL.]

ALMA EPSTEIN,
Notary Public, Wisconsin.

Commission expires the Dec. 25th 1907.

120½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant. vs. General Paper Company, *et al.*, defendants. Answer of George A. Whiting. (Copy) Filed July 6/05 Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

121 July 6, 1905.—Second answer of W. Z. Stuart to order to show cause of June 1, 1905 filed as follows:—

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes W. Z. Stuart and answering the order to show cause made in the above entitled matter and the petition heretofore filed in said matter by said complainant, upon which petition said order to show cause was made, alleges and shows unto the court as follows:

That this respondent was, until July 1st, 1905 the second vice-president of General Paper Company, one of the defendants in the above entitled matter, and as such second vice-president, and not otherwise, is one of the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause and in the petition and schedules attached to the petition upon which said order to show cause was made and that the same are the books, records, papers, reports and contracts of said General Paper Company and not of this respondent and are subject to the control of said General Paper Company and not of this respondent; that said General Paper Company has objected and does object and this respondent has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

122 First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of said General Paper Company in no way bearing upon or touching the issues in

said cause which it would be highly injurious to the business interests of said General Paper Company and the other defendants in said cause to make public and this respondent submits that he ought not to be required to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel said General Paper Company and this respondent as its second vice-president to furnish to said complainant evidence tending to establish that said General Paper Company has been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject said General

123 Paper Company to the penalties for such violations imposed by said act, and that to compel the production by said General Paper Company, through its officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said General Paper Company, be violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through its officers or otherwise, to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the pur-

pose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements now

124 existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel the production by said General Paper Company, through its officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, (except certain matters which occurred long prior to the organization of said General Paper Company and have no relation whatever to the issues in the cause aforesaid,) came to this respondent's knowledge exclusively as second vice-president of said General Paper Company in the conduct of matters entrusted to him as such second vice-president by said General Paper Company and which said General Paper Company, from the nature of the case, was compelled to entrust to this respondent as such second vice-president, and that said General Paper Company has objected and does object and this respondent has objected and does object to said questions and to the same being answered by him for reasons similar to

125 those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say:

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said

General Paper Company, through this respondent as its second vice-president, to furnish to said complainant evidence tending to establish that said General Paper Company has been guilty of certain violations of the acts of Congress above referred to and to subject said General Paper Company to the penalties for such violations imposed by said acts, and that to compel said General Paper Company through this respondent as its second vice-president to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by said General Paper Company, violations of the laws of the State of Wisconsin and would subject said General Paper Company to forfeiture of its charter and other penalties under said laws; that to compel it, through this respondent as its second vice-president, to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

126 Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining said General Paper Company from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to said General Paper Company and constitute a great part of its business and that such virtual annulment and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to said General Paper Company and that to compel it, through this respondent as its second vice-president, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges that he ought not to be required to answer the questions or comply with the requests or produce for inspection by counsel for the complainant or for the pur-

pose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say :

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and
127 for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company complained of by the complainant in its said original petition and bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said defendant, involve certain violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeitures under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

128 Wherefore this respondent asks that said order to show cause be dismissed.

W. Z. STUART.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for Defendant W. Z. Stuart.

STATE OF WISCONSIN,
 Eastern District of Wisconsin, County of Milwaukee, } ss:

W. Z. Stuart, being first duly sworn, deposes and says that he is the respondent making the foregoing answer; that he has read said answer and knows the contents thereof and that the same is true to his own knowledge except as to matters therein set forth on information and belief and as to the same he believes it to be true.

W. Z. STUART.

Subscribed and sworn to before me this 6th day of July, A. D. 1905.

[NOTARIAL SEAL.]

M. A. MARCHANT,
 Notary Public, Wisconsin.

My commission expires April 4th 1908.

128½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company, et al., defendants. Answer of W. Z. Stuart Copy Filed July 6/05 Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

129 July 6, 1905.—Answer of General Paper Company to order to show cause of June 1, 1905, filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes The General Paper Company, one of the defendants in the above entitled matter, and asks leave to appear and file an answer to the order to show cause made by said court in the above entitled matter and to the petition heretofore filed in said matter by said complainant, upon which said order to show cause was made, in conjunction with the answer and objection made herein by the respondent witnesses and in affirmation of the objections and exceptions heretofore made and taken by or on behalf of said witnesses and this defendant, and for such answer it alleges and shows unto the court as follows:—

That George A. Whiting, W. Z. Stuart and L. M. Alexander, who have been ordered to show cause before this court why they and each of them should not make full and proper answer to certain questions referred to in said petition and schedules thereunto an-

nexed, and comply with certain requests mentioned in said petition and schedules, and also produce for inspection by counsel for the petitioner and for the purpose of being offered in evidence in the cause referred to in said petition certain books, records, papers, reports and contracts, particularly referred to in the said petition and

schedules, were respectively the first vice-president, second
130 vice-president and secretary of this defendant, and said

Whiting and said Alexander still are respectively first vice-president and secretary, and as such officers and not otherwise are the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause, and that the same are the books, records, papers, reports and contracts of this defendant and not of said officers and are subject to the control of this defendant, and that this defendant has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said petitioner, or for the purpose of being offered in evidence in said cause. Said objection is based upon the following reasons:—

First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division in said district, has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of this defendant in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of this defendant and the other defendants in said cause to make public, and this defendant submits that it ought not to be required through its officers or otherwise to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of this defendant.

Second. That the purpose of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in making the

requests mentioned in said order to show cause for the in-
131 spection, production and introduction as evidence of said

books, records, papers, reports and contracts is to establish and to compel this defendant to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject this defendant to the penalties for such violations imposed by said act, and that to compel the pro-

duction by this defendant through its said officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States which provides that no person shall be compelled in any criminal case to be a witness against himself; and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of this defendant complained of by the complainant in its said original petition and bill of complaint in said cause, and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this defendant to forfeiture of its charter and other penalties under said laws; that to compel it through its said officers or otherwise to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of
132 said fourth and said fifth amendment to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to this defendant and constitute a great part of its business, and that such virtual annullment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel the production by this defendant through its said officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this defendant alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which said officers refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization of

133 this defendant and have no relation whatever to the issues in the cause aforesaid, came to their knowledge exclusively as officers of this defendant in the conduct of matters entrusted to them as such officers by this defendant, and which this defendant, from the nature of the case, was compelled to entrust to them as such officers, and that this defendant has objected and does object to said questions and to the same being answered by said officers for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say:—

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered, and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel this defendant, through its said officers, to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the acts of Congress above referred to and to subject this defendant to the penalties for such violations imposed by said acts, and that to compel this defendant through its said officers to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of this defendant complained of by the complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this defendant to forfeiture of its charter and other penalties under said

134 laws; that to compel it through its said officers to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts, and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions, hereinbefore referred to, of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agree-

ments are of great value to this defendant and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel this defendant, through its said officers, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Wherefore this defendant asks that said order to show cause be dismissed.

GENERAL PAPER COMPANY, Defendant.
WINKLER, FLANDERS, SMITH,
BOTTUM & FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for Defendant General Paper Company.

135 STATE OF WISCONSIN,
 Eastern District of Wisconsin, } ss:
 County of Milwaukee,

L. M. Alexander, being first duly sworn, deposes and says that he is the secretary of General Paper Company, the defendant making the above answer, and verifies said answer in behalf of said General Paper Company, which is a corporation; that all the facts set forth in said answer are within the knowledge of this deponent and that the same are true to his own knowledge.

L. M. ALEXANDER.

Subscribed and sworn to before me this 6th day of July, A. D. 1905.

CHAS. E. WILD,
Notary Public, Wisconsin.

My commission expires Sept. 27, 1908.

135½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company, *et al.*, defendants. Answer of General Paper Company. Copy Filed July 6/05 Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78.

136 August 3, 1905.—Third answer of L. M. Alexander to order to show cause of June 1, 1905, filed as of July 6, 1905, pursuant to order of court this day made, and which is as follows:—

Third Answer.

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes L. M. Alexander and answering the order to show cause made in the above entitled matter on the first day of June A. D. 1905, and the petition heretofore filed in said matter by said complainant upon which said order to show cause was made, alleges and shows unto the court as follows:—

That this respondent is the secretary of General Paper Company, one of the defendants in the above entitled matter, and as such secretary, and not otherwise, is one of the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause and in the petition and schedules attached to the petition upon which said order to show cause was made and that the same are the books, records, papers, reports and contracts of said General Paper Company and not of this respondent and are subject to the control of said General Paper Company and not of this respondent; that this respondent is the presi- of The John Edwards Manufacturing Company, one of the defendants in the above entitled action, and is the owner and holder of stock in said company of the par value of sixty thousand dollars (\$60,000); that he is the secretary and treasurer of The Nekoosa Paper Company, another of said defendants, and the owner and holder of stock in said
 137 company of the par value of forty thousand dollars (\$40,000); that he is the secretary of Centralia Pulp & Water-Power Company, another of said defendants, and the owner and holder of stock in said company of the par value of twenty-five thousand dollars (\$25,000); and that he is also the owner and holder of stock of said General Paper Company of the par value of six thousand dollars (\$6000); that said General Paper Company and the above named defendants The John Edwards Manufacturing Company, The Nekoosa Paper Company and Centralia Pulp & Water-Power Company, have objected and do object, and this respondent has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not been established so as to authorize a court of equity to order their in-

spection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of said General Paper Company and the other defendants hereinabove named in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of said General Paper Company and the other defendants hereinabove named as well as of all the other defendants to said cause to make public, and this respondent submits that he ought not to be required to disclose any portions of said books, records, papers, reports or contracts except on a
138 proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel said General Paper Company and the other defendants hereinabove named and this respondent as such officer of each of said defendants to furnish to said complainant evidence tending to establish that said General Paper Company and the other defendants hereinabove named have been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject said General Paper Company and the other defendants hereinabove named to the penalties for such violations imposed by said act, and that to compel the production by said General Paper Company or by either of the other defendants hereinabove named through their officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States, which provides that the right of the
people to be secure in their persons, houses, papers and effects
139 against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company and of the other defendants hereinabove named, complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said General Paper Company, or the other defendants hereinabove named, be violations of the laws of the

State of Wisconsin and would subject said General Paper Company and the other defendants hereinabove named to forfeiture of their charters and other penalties under said laws; that to compel either of said defendants through its officers or otherwise to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and upon them rests practically its entire business, and that the same are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including the defendants hereinabove named, and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company and the other defendants above named and to this respondent as a stockholder in each of them, and that to compel the production by said General Paper Company and the other defendants hereinabove named, or either of them, through their officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering, this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization

of said General Paper Company and have no relation whatever to the issues in the cause aforesaid, came to this respondent's knowledge exclusively as secretary of said General Paper Company or as an officer of one or another of the other defendants hereinabove named in the conduct of matters entrusted to him as such secretary

or officer and which said companies, from the nature of the 141 case, were compelled to entrust to this respondent as such secretary or officer, and that said General Paper Company and the other defendants hereinabove named have objected and do object and this respondent has objected and does object to said questions and to the same being answered by him for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say :

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said General Paper Company through this respondent as its secretary, and the other defendants hereinabove named through this respondent as such officer, to furnish to said complainant evidence tending to establish that said General Paper Company and the other defendants hereinabove named have been guilty of certain violations of the acts of Congress above referred to and to subject them to the penalties for such violations imposed by said acts, and that to compel said General Paper Company and the other defendants hereinabove named through this respondent to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company and of the other defendants, including the defendants hereinabove named complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed

142 by them, violations of the laws of the State of Wisconsin and would subject said General Paper Company and the other defendants hereinabove named to forfeiture of their charters and other penalties under said laws ; that to compel them through this respondent to answer the questions aforesaid would be to compel them to furnish evidence tending to establish that they have been guilty of such acts and subject them to the forfeiture of their charters and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the

questions mentioned in said order to show cause is to obtain a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to said General Paper Company and upon them rests practically its entire business and that the same are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including the defendants hereinabove named, and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company and the other defendants hereinabove named and to this respondent as a stockholder in each of them, and that to compel said General Paper Company or the defendants hereinabove named through this respondent to

answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering, this respondent alleges that he ought not to be required to answer the questions or comply with the requests or produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say:

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to com-

pel this respondent to answer said questions or comply with
144 said requests or to produce for inspection or for the purpose
of being offered in evidence in said cause the said books,
records, papers, reports and contracts would be contrary to the provisions
hereinbefore referred to of said fourth and said fifth amendment-
to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company
and of the other defendants hereinabove named, to-wit: The John
Edwards Manufacturing Company, The Nekoosa Paper Company
and Centralia Pulp & Water-Power Company, complained of by the
complainant in its said original petition or bill of complaint in said
cause and which said complainant is endeavoring to establish in said
cause, would, if committed by said defendant companies, involve
certain violations of the laws of the State of Wisconsin by this respondent
and would subject him to penalties and forfeitures under
said laws, and that to compel him to answer the questions or comply
with the requests aforesaid or to produce for inspection or for the
purpose of being offered in evidence in said cause the said books,
records, papers, reports and contracts would be to compel this respondent
to furnish evidence tending to establish that he has been
guilty of such violations of the laws of the State of Wisconsin and
to subject him to the penalties and forfeitures aforesaid, contrary to
the provisions hereinbefore referred to of said fourth and said fifth
amendment- to the Constitution of the United States.

Third. That one of the purposes of said complainant in instituting
said cause in said circuit court of the United States in and for the
district of Minnesota in the third division of said district and in
seeking to require this respondent to answer the questions and comply
with the requests and produce for inspection by counsel for the
complainant and for the purpose of being offered in evidence in the
cause above referred to the books, records, papers, reports and contracts
above referred to is to establish and to compel this re-
145 spondent to furnish to said complainant evidence tending to
establish the allegations of the original petition or bill of
complaint in said cause, which if established will result in subjecting
this respondent to loss or detriment in the nature of a penalty or
forfeiture, in that said The John Edwards Manufacturing Company,
the Nekoosa Paper Company and Centralia Pulp & Water-Power
Company, of each of which this respondent is a stockholder as aforesaid,
as well as said defendant General Paper Company, of which he
is also a stockholder, will be subjected under the laws of the State
of Wisconsin to the forfeiture of their charters, resulting in the virtual
forfeiture of the stock of this respondent in said defendant companies
and to the loss and forfeiture to a large extent of the value
of the interest of this respondent in said corporations of which he is
a stockholder as aforesaid, and in that the contracts made through
said General Paper Company as their sales agent by the other defendants
above named, under and pursuant to the agency contracts
hereinbefore referred to between said General Paper Company and

the other defendants above named will be virtually annulled and the property rights of said The John Edwards Manufacturing Company, the Nekoosa Paper Company and Centralia Pulp & Water-Power Company respectively in said contracts destroyed; that there are a large number of such contracts outstanding under which large sums of money, exceeding the sum of ten thousand dollars in each case, are due to each of said last named defendants, all of which, as this respondent is advised and believes, will be or may be forfeited and lost to said defendants last named and to this respondent as a stockholder therein in case the illegal combination alleged in said original petition or bill of complaint is established by the decree or judgment in said cause. And this respondent alleges that to compel him to answer the questions and comply with the requests
146 and produce for inspection and for the purpose of being offered in evidence the books, records, papers, reports and contracts referred to in said order to show cause and the petition and schedules thereto annexed and which he has declined to answer and comply with or produce, if material to said cause would be contrary to the provisions of said fourth and said fifth amendment to the Constitution of the United States and also contrary to the well established rule of the common law and of equity jurisprudence, that no person will be compelled to discover any fact or matter which may subject him to forfeiture or penalty or anything in the nature of a forfeiture or penalty.

(Signed)

LEWIS M. ALEXANDER.
WINKLER, FLANDERS, SMITH,
BOTTUM & FAWSETT, AND
DEFREES, BRACE & RITTER, Solicitors.

STATE OF WISCONSIN,

Eastern District of Wisconsin, County of Milwaukee, } ss:

L. M. Alexander, being first duly sworn, deposes and says that he is the respondent making the foregoing answer; that he has read said answer and knows the contents thereof and that the same is true to his knowledge except as to matters therein set forth on information and belief and as to the same he believes it to be true.

(Signed)

LEWIS M. ALEXANDER.

Subscribed and sworn to before me this 2d day of August, A. D. 1905.

CHAS. E. WILD,

[SEAL.]

Notary Public, Milwaukee County, Wisconsin.

147 August 3, 1905.—Third answer of George A. Whiting to order to show cause of June 1, 1905, filed as of July 6, 1905, pursuant to order of court this day made, and which is as follows:—

Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes George A. Whiting and answering the order to show cause made in the above entitled matter on the first day of June, A. D. 1905 and the petition heretofore filed in said matter by said complainant upon which said order to show cause was made, alleges and shows unto the court as follows:

That this respondent is the first vice president of General Paper Company, one of the defendants in the above entitled matter, and owner and holder of stock therein of the par value of thirty-five hundred dollars (\$3500), and as such first vice president and not otherwise is one of the custodians of the books, records, papers, reports and contracts mentioned in said order to show cause and in the petition and schedules attached to the petition upon which said order to show cause was made and that the same are the books, records, papers, reports and contracts of said General Paper Company and not of this respondent and are subject to the control of said General Paper Company and not of this respondent; that this respondent is also the president of The Wisconsin River Paper & Pulp Company, one of the defendants in the above entitled matter, and is the owner and holder of stock in said last named company of the par value of over one hundred thousand dollars (\$100,000); that said General Paper Company and said The Wisconsin River Paper & Pulp Company have objected and do object, and this respondent has objected and does object to the production of
 148 said books, records, papers, reports and contracts for inspection by counsel for said complainant for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of said General Paper Company and said The Wisconsin River Paper & Pulp Company in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of said General Paper Company and said The Wisconsin River Paper & Pulp Company as well as of all the other defendants in said cause to

make public, and this respondent submits that he ought not to be required to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel said General Paper Company and said The Wisconsin River Paper & Pulp Company and this respondent as such officer of each of said

149 defendants to furnish to said complainant evidence tending to establish that said General Paper Company and said The Wisconsin River Paper & Pulp Company have been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject said General Paper Company and said The Wisconsin River Paper & Pulp Company to the penalties for such violations imposed by said act, and that to compel the production by said General Paper Company or by said The Wisconsin River Paper & Pulp Company through their officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States, which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company and of said The Wisconsin River Paper & Pulp Company, complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would, if committed by said General Paper Company or the said The Wisconsin River Paper & Pulp Company, be violations of the laws of the State of Wisconsin and would subject said General Paper Company and said The Wisconsin River Paper & Pulp Company to forfeiture of their charters and other penalties under said laws; that to compel either of said companies through its officers or otherwise to produce said books, 150 records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to fur-

nish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and upon them rests practically its entire business, and that the same are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including said The Wisconsin River Paper & Pulp Company, and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company and said The Wisconsin River Paper & Pulp Company and to this respondent as a stockholder in said companies, and that to compel the production by said General Paper Company and said The Wisconsin River Paper &

151 Pulp Company or either of them through their officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering, this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization of said General Paper Company and have no relation whatever to the issues in the cause aforesaid, came to this respondent's knowledge exclusively as first vice president of said General Paper Company or as president of said The Wisconsin River Paper & Pulp Company in the conduct of matters entrusted to him as such first vice president or president and which said companies, from the na-

ture of the case, were compelled to entrust to this respondent as such first vice president or president, and that said General Paper Company and said The Wisconsin River Paper & Pulp Company have objected and do object and this respondent has objected and does object to said questions and to the same being answered by him for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say :

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court
152 of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said General Paper Company through this respondent as its first vice president, and said The Wisconsin River Paper & Pulp Company through this respondent as its president, to furnish to said complainant evidence tending to establish that said General Paper Company and said The Wisconsin River Paper & Pulp Company have been guilty of certain violations of the acts of Congress above referred to and to subject them to the penalties for such violations imposed by said acts, and that to compel said General Paper Company and said The Wisconsin River Paper & Pulp Company through this respondent to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company and of the other defendants, including said The Wisconsin River Paper & Pulp Company, complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by them, violations of the laws of the State of Wisconsin and would subject said General Paper Company and said The Wisconsin River Paper & Pulp Company to forfeiture of their charters and other penalties under said laws; that to compel them through this respondent to answer the questions aforesaid would be to compel them to furnish evidence tending to establish that they have been guilty of such acts and subject them to the forfeiture of their charters and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

153 Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were

made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to said General Paper Company and upon them rests practically its entire business and that the same are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including said The Wisconsin River Paper & Pulp Company, and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company and said The Wisconsin River Paper & Pulp Company and to this respondent as a stockholder in each of them, and that to compel said General Paper Company or said The Wisconsin River Paper & Pulp Company through this respondent to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering, this respondent alleges that he ought not to be required to answer the questions or comply with the re-
154 quests or produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say:

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the act of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company and of said The Wisconsin River Paper & Pulp Company, complained of by the complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause, would, if committed, by said defendant companies, involve certain violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeitures under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Third. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts above referred to is to establish and to compel this respondent to furnish to said complainant evidence tending to establish the allegations of the original petition or bill of complaint in said cause, which if established will result in subjecting this respondent to loss or detriment in the nature of a penalty or forfeiture, in that said The Wisconsin River Paper & Pulp Company, of which this respondent is a stockholder as aforesaid, as well as said General Paper Company, of which he is also a stockholder, will be subjected under the laws of the State of Wisconsin to the forfeiture of their charter, resulting in the virtual forfeiture of the stock of this respondent in said The Wisconsin River Paper & Pulp Company and General Paper Company and to the loss and forfeiture to a large extent of the value of his interest in said companies and in that the contracts made through said General Paper Company as its sales agent by said The Wisconsin River Paper & Pulp Company under and pursuant to the agency contracts hereinbefore referred to between it and said General Paper Company will be virtually annulled and the property rights of said The Wisconsin River Paper & Pulp Company in said contracts destroyed; that there are a large number of such contracts outstanding under which large sums of money, exceeding the sum of ten thousand dollars, are due to said last named defendant, all of which, as this respondent is advised and believes, will be or may be forfeited and lost to said defendant last named and to this respondent as a stockholder therein in case the illegal combination alleged in said original petition or bill of com-

plaint is established by the decree or judgment in said cause; and this respondent alleges that to compel him to answer the questions and comply with the requests and produce for inspection and for the purpose of being offered in evidence the books, records, papers, reports and contracts referred to in said order to show cause and the petition and schedules thereto annexed and which he has declined to answer and comply with or produce, if material to said cause, would be contrary to the provisions of said fourth and said fifth amendment to the Constitution of the United States and also contrary to the well established rule of the common law and of equity jurisprudence, that no person will be compelled to discover any fact or matter which may subject him to forfeiture or penalty or anything in the nature of a forfeiture or penalty.

GEORGE A. WHITING.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER, Solicitors.

STATE OF WISCONSIN, } ss:
County of Portage, }

George A. Whiting, being first duly sworn, deposes and says that he is the respondent making the foregoing answer; that he has read said answer and knows the contents thereof and that the same is true to his own knowledge except as to matters therein set forth on information and belief and as to the same he believes it to be true.

GEORGE A. WHITING.

Subscribed and sworn to before me this 2nd day of August, A. D. 1905.

[NOTARIAL SEAL.]

R. B. JOHNSON,
Notary Public, Portage County, Wisconsin.

My commission expires July 9, 1909.

156½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Answer of George A. Whiting to order to show cause etc. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed July 6, 1905, pursuant to order of August 3, 1905. Edw. Kurtz, clerk.

157 In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

It is hereby ordered and directed that the answer of L. M. Alexander, verified on the 2nd day of August, 1905, and the answer of

George A. Whiting, verified on the 2d day of August, 1905, in the above entitled matter, may be filed as of the 6th day of July, 1905.
Dated August 3rd, 1905.

WM. H. SEAMAN,
Circuit Judge.

157½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Co. *et al.*, defendants. Order. Matter of L. M. Alexander, George A. Whiting & W. Z. Stuart. Filed August 3, 1905. Edw. Kurtz, clerk.

158 Order Requiring Witnesses to Answer.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET ALS., Defendants. }

In the Matter of Proceedings to Compel the Witnesses L. M. ALEXANDER, GEORGE A. WHITING, and W. Z. STUART to Answer Questions and Produce Books and Documents.

The above entitled matter, having come before the court on the petition of the above named complainant, The United States of America, and the order to show cause issued in accordance with the prayer of said petition directing the witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart, mentioned in said petition, to appear and show cause why they should not answer certain questions, comply with certain requests, and produce certain books, papers, documents, reports and contracts, as particularly described and set forth in the said petition and schedule of refusals thereunto annexed; and on all the answers of said Alexander, Whiting and Stuart and of said General Paper Company to said petition and order to show cause, including the answers of the parties named, allowed by the court to be filed, and filed herein on the 6th day of July, 1905; and the said witnesses and said General Paper Company appearing by their counsel, Messrs. Winkler, Flanders, Smith, Botwin & Fawcett and Messrs. Defrees, Brace and Ritter, and the said complainant, The United States of America, appearing by its counsel, Messrs. Frank B. Kellogg, James M. Beck and Robert E. Olds,

159 Now therefore, after hearing counsel, it is ordered, adjudged and decreed:

That the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, be and they are hereby each of them directed to appear

before Robert S. Taylor, special examiner in the above entitled action, at a time and place hereafter to be designated by said examiner, in the United States court house in the city of Milwaukee, Wisconsin, and there each of them directed to answer each and every of the questions put to them respectively by the counsel for said complainant, The United States of America, as set forth in the petition herein and the schedule thereunto annexed; and the said witnesses and each of them are hereby directed to produce before said examiner, at such time and place, the books, papers, records, documents, reports and contracts requested of them respectively, as more particularly appears by said petition and the schedule of refusals thereunto annexed, for the purposes of their respective examinations in said cause, and for use in evidence by the complainant, The United States of America, in said examination; and the complainant's counsel shall have the right, at such time and place and on any adjournment of said hearing before said examiner, to inspect the said books, papers, records, documents, reports and contracts and to introduce them and any of them in evidence in said cause; but the custody of said books, records, papers, documents, reports and contracts shall not be taken from said witnesses or their counsel except as may be necessary for such inspection and use in evidence, the permanent custody thereof to remain in said witnesses.

(Signed)

WM. H. SEAMAN,
Circuit Judge.

Dated at Milwaukee, Wis., this 6th day of July, 1905.

159½ [Endorsed:] United States circuit court, eastern district of Wisconsin. United States of America, complainant, vs. General Paper Company *et al.*, defendants. Order compelling witnesses to answer. Copy Signed & filed July 6/05. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78.

160 August 3, 1905.—Assignment of errors by L. M. Alexander filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Assignment of Errors by L. M. Alexander.

Now comes the said L. M. Alexander and for his assignment of errors in the above entitled matter says that in the final order and decree heretofore made and entered in said matter by the court aforesaid there is error in the respects hereinafter set forth, that is to say:

1. The court erred in directing said Alexander to produce the record book of said General Paper Company for the purpose of having the whole of pages 33 to 37 thereof, containing the minutes of the annual stockholders' meeting in December, 1900 offered in evidence by counsel for the United States.

161 2. The court erred in directing said Alexander after having read in evidence certain portions of the pages aforesaid to read the rest of the minutes of said stockholders' meeting which he had omitted to read.

3. The court erred in directing said Alexander to permit counsel for the United States to examine the records of the stockholders' meeting held in December, 1900 in order to test the correctness of the witness's statements in reference to the business done at said meeting.

4. The court erred in directing said Alexander to permit the examiner to copy said pages 33 to 37 inclusive of the record book of said General Paper Company for the purpose of having them offered in evidence by counsel for the United States.

5. The court erred in directing said Alexander to permit the examiner to initial pages 42 to 45 inclusive of said record book, being the minutes of the stockholders' meeting of December 10, 1901.

6. The court erred in directing said Alexander to exhibit said record book to counsel for the United States for examination in order to verify the testimony of said Alexander in reference to business done at the annual stockholders' meeting held December 10, 1901.

7. The court erred in directing said Alexander to read all of the minutes of said stockholders' meeting of December 10, 1901, including certain portions which he had previously omitted to read.

8. The court erred in directing said Alexander to read the whole of the report of the committee appointed at the stockholders' meeting of December 10, 1901, including certain portions which the witness had omitted to read.

9. The court erred in directing said Alexander to answer the question: When the law and the by-laws of your company require you to keep the possession of these books, why do you part with them?

10. The court erred in directing said Alexander to state his recollection as to the balance of the report of the committee appointed at the stockholders' meeting of December 10, 1901
162 which he had not read.

11. The court erred in directing said Alexander to answer the question, whether he refused to read the balance of said report on the ground that the testimony would tend to incriminate him.

12. The court erred in directing said Alexander to permit counsel for the United States to examine said record book or to take the same for the purpose of examining it to see whether there was anything anywhere therein beside what said Alexander had stated referring to the report of the committee above referred to.

13. The court erred in directing said Alexander to answer the question whether there was a meeting of the board of directors of said General Paper Company held in January, 1902.

14. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes contained in the record book of said General Paper Company of the meeting of the stockholders held December 8, 1903.

15. The court erred in directing said Alexander to look and see whether any part of the record of the proceedings of the annual stockholders' meeting of December 8, 1903 other than that which he had already read in evidence related in any way to any corporation defendant making the General Paper Company its sales agent or making a contract therefor.

16. The court erred in directing said Alexander to answer the question whether the balance of said meeting of December 8, 1903, other than that read by him referred to any business between said General Paper Company and the constituent mills making contracts with it as sales agent.

17. The court erred in directing said Alexander to state the pages of said record book containing a record of said stockholders' meeting of December 8, 1903.

163 18. The court erred in directing said Alexander to read in evidence the whole of page 70 of said record book relating to the meeting of the board of directors of said General Paper Company held December 8, 1903.

19. The court erred in directing said Alexander to examine said record book for the purpose of ascertaining the numbers of the pages comprising the entire record of said meeting of the board of directors held December 8, 1903.

20. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the meeting of the directors of said General Paper Company held December 8, 1903.

21. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the stockholders' annual meeting of said General Paper Company held in December, 1904.

22. The court erred in directing said Alexander to produce the record book of said General Paper Company for the purpose of having offered in evidence the record of all meetings of the board of directors held during the year 1900.

23. The court erred in directing said Alexander to answer the question: Do any of those meetings of the board of directors in 1900 refer to the business between any of the corporations having a contract with the General Paper Company and the General Paper Company?

24. The court erred in directing said Alexander to state what the meetings of the board of directors held in 1900 referred to.

25. The court erred in directing said Alexander to answer the questions: How many directors' meetings were there during 1900? and will you give the dates of those meetings?

164 26. The court erred in directing said Alexander to comply with the request that he should look at the record book of said General Paper Company to see if there was a meeting of the board of directors of said company on the 18th of June, 1900.

27. The court erred in directing said Alexander to produce before the examiner the minutes of the meetings of the executive committee of said General Paper Company.

28. The court erred in directing said Alexander to answer the questions: As secretary of the General Paper Company, are you the custodian of such records (referring to the minutes referred to in the 27th assignment of error); when did Mr. Flanders get possession of said records? When did said records leave your possession? Have you had said records within your possession within the last thirty days?

29. The court erred in directing said Alexander to state whether the treasurer's report made to the stockholders' meeting of December 8, 1903 contained the result of all the sales of paper made by the General Paper Company.

30. The court erred in directing said Alexander to state what subject said report dealt with.

31. The court erred in directing said Alexander to answer the

questions: Do you know the total of sales each year by the General Paper Company in value? Do your treasurer's reports show the total sales in value each year made by the General Paper Company? Have you any books under your control showing the total sales each year of the General Paper Company?

32. The court erred in directing said Alexander to answer the question: Do your sales each year amount to in the neighborhood of ten millions of dollars in value?

33. The court erred in directing said Alexander to state whether the minutes of the stockholders of each year shows that the general sales agent made a report.

165 34. The court erred in directing said Alexander to answer the question: Does the directors' annual meeting held in December, 1900 show the presentation of a report of the sales manager?

35. The court erred in directing said Alexander to answer the same question in reference to the annual directors' meetings of 1901, 1902, 1903 and 1904.

36. The court erred in directing said Alexander to state: What dividends, if any, have been paid by the General Paper Company?

37. The court erred in directing said Alexander to answer the question: Do your books show the dividends paid?

38. The court erred in directing said Alexander to answer the questions: You know, do you, what dividends, if any, have been paid by the General Paper Company? and, If any dividends are paid, it is your duty to pay them?

39. The court erred in directing said Alexander to produce the contracts between said General Paper Company and various publishers for the sale of news print paper.

40. The court erred in directing said Alexander to state whether the contracts just referred to (39th assignment of error) are usually on a printed blank.

41. The court erred in directing said Alexander to answer the question: Do you know where that form of contract was procured—whether it was taken from the form of contract used by the International Paper Company or not?

42. The court erred in directing said Alexander to answer the question: During the existence of the General Paper Company has there been a pool among these mills in connection with the General Paper Company covering fibre paper or butchers' fibre paper?

43. The court erred in directing said Alexander to answer the question: Is it not a fact that certain of the mills which made butchers' fibre were compensated by the other mills and that the other mills made payments through E. A. Edmonds, who distributed the money to the mills making butchers' fibre?

166 44. The court erred in directing said Alexander to answer the question: Is there not less profit in the manufacture of butchers' fibre than in any other paper?

45. The court erred in directing said Alexander to answer the question whether the Nekoosa Paper Company was compensated

for making butchers' fibre by the other companies in this combination.

46. The court erred in directing said Alexander to answer the question, whether or not Mr. E. A. Edmonds, formerly of the Falls Manufacturing Company and now of the Rhinelander Paper Company, was the clearing house through which any payments were made to compensate any mill for making butchers' fibre?

47. The court erred in directing said Alexander to answer the question, whether any of the defendants made such payments through E. A. Edmonds.

48. The court erred in directing said Alexander to answer the question: Do you know of your own knowledge that the General Paper Company or some officer of the General Paper Company did not send checks of the separate mills to Mr. E. A. Edmonds who sent the checks or divided up the money between the mills making butchers' fibre?

49. The court erred in directing said Alexander to state whether or not any of the mills not making butchers' fibre sent checks through the General Paper Company or any officer of the General Paper Company to E. A. Edmonds for such purpose.

50. The court erred in directing said Alexander to state whether the General Paper Company or any officer of said company sent checks or the money of any of the constituent companies having contracts with it to Mr. Edmonds for the purpose of compensating the mills making butchers' fibre.

51. The court erred in directing said Alexander to state whether settlements between the mills through the General Paper
167 Company or any officer of the General Paper Company were made once in three months to compensate the mills making butchers' fibre paper.

52. The court erred in directing said Alexander to state whether there was any pool between the defendant companies since the organization of the General Paper Company on any other grades of paper.

53. The court erred in directing said Alexander to answer the question: Do the books which are kept under your direction or by you show the payment by any of the defendant mills since the organization of the General Paper Company to any of the other defendant mills of any sum of money to compensate any of the defendant mills making butchers' fibre?

54. The court erred in directing said Alexander to state whether he had any discussion about the Manufacturers Paper Company acting as sales agent for all these defendant mills, or a part of them, at some meeting in Chicago, which may have been prior to May 26, 1900, at Mr. Brocklebank's office, at which Mr. Garrison and Mr. Nash may have been present.

55. The court erred in directing said Alexander to answer the question: Well, you recollect such meeting now, do you?

56. The court erred in directing said Alexander to answer the

question: Now I ask if you did not attend a meeting at the Grand Pacific hotel in Chicago at which you were present, Mr. Brocklebank, Mr. Garrison, Mr. Nash, Mr. Whiting, Mr. Kimberly, Mr. Stuart and perhaps others, at which meeting a discussion was had and a proposition made to the Manufacturers Paper Company to act as selling agent.

57. The court erred in directing said Alexander to answer the question: Do you recollect any such meeting?

58. The court erred in directing said Alexander to answer the question: Did you make a statement to anyone after that meeting of what occurred at that meeting? (referring to the meeting described in the 56th assignment of error).

168 59. The court erred in directing said Alexander to answer the following question: Did you not attend a meeting in Chicago at the Grand Pacific hotel at which you were present, Mr. Brocklebank of the Manufacturers Paper Company, Mr. J. A. Kimberly, Mr. T. E. Nash, Mr. F. Garrison, Mr. George A. Whiting, Mr. A. N. Pride, Mr. John Van Nortwick, Mr. Charles Babcock—all of whom except Mr. Brocklebank were afterwards directors or officers of the General Paper Company—at which meeting you discussed the plans for organizing or for procuring the General Paper Company to act as the exclusive sales agent of these defendants, or some of them, The Manufacturers Paper Company, I mean, and at which you afterwards discussed the plans of organizing the General Paper Company? I mean this meeting held some time in March, 1900.

60. The court erred in directing said Alexander to answer the question: At any meeting held in January, 1902, or about that time, was the subject of making any arrangement with the Manufacturers Paper Company discussed and is there any record of any such discussion?

61. The court erred in directing said Alexander to answer the question: Do you know whether at any time the subject was discussed at the board of directors' meeting as to making any arrangement with the Manufacturers Paper Company about the sale of paper in the territory west of Chicago?

62. The court erred in directing said Alexander to state whether he gave out a statement of what occurred at a directors' meeting of the General Paper Company held in Appleton, Wisconsin on June 18th, 1900 to the trade paper.

63. The court erred in directing said Alexander to state whether at the city of Appleton, after the meeting of the board of directors on June 18, 1900 he stated to a reporter of the trade journal in words or in substance that the contracts closing the matter were all ready and the only point to be settled was as to who was to sign them;

169 finally it was settled that all the mills in the State making print, manilla and fibre would sign except the Marinette & Menominee Paper Company, and whether he then gave a list of the companies who had signified their willingness to enter into contracts.

64. The court erred in directing said Alexander to answer the question: Did you make that statement during the meeting of the board? (Referring to the question in the 63d assignment of error.)

65. The court erred in directing said Alexander to answer the question: Can you, in a general way, state what the principal product of the defendant mills is, whether it is news print paper or other classes?

66. The court erred in directing said Alexander to appear before Robert S. Taylor, special examiner in the above entitled action and answer each and every of the questions put to him by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedule thereunto annexed.

67. The court erred in directing said Alexander to produce before said examiner the books, papers, records, documents, reports and contracts requested of him as set forth in said petition and schedule for the purposes of his examination in said cause and for use in evidence by the complainant in said examination.

68. The court erred in ordering that said complainant's counsel shall have the right to inspect the said books, papers, records, documents, reports and contracts.

69. The court erred in ordering that said complainant's counsel shall have the right to introduce the said books, papers, records, documents, reports and contracts and any of them in evidence in said cause.

Wherefore said L. M. Alexander prays that the order and decree of said circuit court of the United States for the eastern district of Wisconsin in the above matter, so far as it relates to said Alexander
170 or to any of the matters above assigned as error, for the errors aforesaid and for other errors in the record and proceedings in said matter and in the order and decree aforesaid, may be reversed and that said court may be directed to enter a decree dismissing the petition in said matter so far as it relates to said Alexander or to any of the matters above assigned as error.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for said L. M. Alexander.

JAMES G. FLANDERS, Of Counsel.

170½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Assignment of errors by L. M. Alexander. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905 Edw. Kurtz clerk

171 August 3, 1905.—Assignment of errors by the respondent George A. Whiting filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of the UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Assignment of Errors by George A. Whiting.

Now comes the said George A. Whiting and for his assignment of errors in the above entitled matter says that in the final order and decree heretofore made and entered in said matter by the court aforesaid there is error in the respects hereinafter set forth, that is to say:

1. The court erred in directing said Whiting to answer the question: Did you have any meeting at Chicago where you discussed the subject of making the Manufacturers Paper Company the selling agent of these defendants or any of them?

172 2. The court erred in directing said Whiting to state whether he had ever had any business with Mr. J. C. Brocklebank.

3. The court erred in directing said Whiting to answer the question: Was this (the organization of a company for the purpose of selling paper) finally agreed on between you gentlemen before the final organization of the company?

4. The court erred in directing said Whiting to answer the question: Did you have any idea prior to May 26th, 1900 what proportion of the stock your company was going to get?

5. The court erred in directing said Whiting to answer the question: Prior to the time you subscribed for the stock for your mill, did you have any understanding with the other gentlemen who went into this organization as to the amount of stock which should be given to each one of you?

6. The court erred in directing said Whiting to answer the question: Did you mean to say that you, as one of the principal men, caused the General Paper Company to be organized to handle more than ten million dollars of products per year and that you do not recollect the plan on which it was organized?

7. The court erred in directing said Whiting to answer the question: You have no recollection of an understanding between

you gentlemen as to the basis of the division of the stock at all?

8. The court erred in directing said Whiting to answer the question: You have no recollection of meeting with these gentlemen and agreeing on the form of a contract?

9. The court erred in directing said Whiting to answer the question: You remember that a contract was adopted at some meeting, do you?

10. The court erred in directing said Whiting to answer the question: Did you ever have any talk with Mr. Bossard about making the General Paper Company its selling agent?

173 11. The court erred in directing said Whiting to answer the question: Did you, on or about February 5, 1902, which is the date — which the Itasca Paper Company entered into a contract with the General Paper Company making it its exclusive selling agent for certain grades of paper, have any conversation with Mr. Bossard of that company about entering into that contract with the General Paper Company?

12. The court erred in directing said Whiting to state whether Mr. H. C. McNair declined to take stock in the General Paper Company at a talk had between said Whiting and said McNair at Appleton about entering into a contract with the General Paper Company before the organization of the General Paper Company.

13. The court erred in directing said Whiting to state what conversation he had with Mr. McNair in Chicago one day either in the lobby of the General Paper Company or at some hotel.

14. The court erred in directing said Whiting to answer the question: Did you have any conversation with him (McNair) about the Northwest Paper Company entering into a contract with the General Paper Company?

15. The court erred in directing said Whiting to answer the question: How do you know he (McNair) had concluded to go in? (meaning into the General Paper Company).

16. The court erred in directing said Whiting to state whether he had any conversation with McNair in reference to the Northwest Paper Company making the General Paper Company its selling agent.

17. The court erred in directing said Whiting to answer the question: State whether you did or did not have any conversation with Mr. McNair in which you discussed with him the subject of the Northwest Paper Company making the General Paper Company its general agent prior to the time it went into the combination.

18. The court erred in directing said Whiting to answer the question: Did you have any conversation with Mr. McNair prior
174 to the time his company entered into this contract with the General Paper Company making it the exclusive selling agent—about his company making any such contract?

19. The court erred in directing said Whiting to answer the question: Do you not know from your own knowledge that for nearly

two years the Northwest Paper Company refused to make the General Paper Company its selling agent?

20. The court erred in directing said Whiting to state whether at the last annual meeting of the General Paper Company held in December, 1904 he heard the subject discussed as to the Petoskey Fibre Paper Company renewing its contract.

21. The court erred in directing said Whiting to answer the question: Was there any discussion at that meeting about dropping Mr. Cheeseman from the board of directors because his company had not entered into a contract renewing its contract making the General Paper Company its selling agent?

22. The court erred in directing said Whiting to answer the question: After the organization of the General Paper Company did you have any conversation with any of the officers of the International Paper Company about keeping out of this territory west of Chicago?

23. The court erred in directing said Whiting to answer the question: Did you ever hear of a pool on butchers' fibre between any of the defendant mills?

24. The court erred in directing said Whiting to state whether he never heard of an arrangement whereby certain of the defendant mills made payments through the General Paper Company or some officer of the General Paper Company to certain other of the defendant mills which manufactured butchers' fibre.

25. The court erred in directing said Whiting to answer the question: Did you ever hear of such an arrangement between any of these parties? (referring to the arrangement mentioned in the 24th assignment of error).

175 26. The court erred in directing said Whiting to appear before Robert S. Taylor, special examiner in the above entitled action, and answer each and every of the questions put to him by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedule thereunto annexed.

27. The court erred in directing said Whiting to produce before said examiner the books, papers, records, documents, reports and contracts requested of him as set forth in said petition and schedule for the purposes of said examination in said cause and for use in evidence by the complainant in said examination.

28. The court erred in ordering that said complainant's counsel shall have the right to inspect the said books, papers, records, documents, reports and contracts.

29. The court erred in ordering that said complainant's counsel shall have the right to introduce the said books, records, papers, documents, reports and contracts and any of them in evidence in said cause.

Wherefore said George A. Whiting prays that the order and decree of said circuit court of the United States for the eastern district of Wisconsin in the above matter, so far as it relates to said Whiting or to any of the matters above assigned as error, for the errors aforesaid and for other errors in the record and proceedings in said matter

and in the order and decree aforesaid, may be reversed and that said court may be directed to enter a decree dismissing the petition in said matter so far as it relates to said Whiting or to any of the matters above assigned as error.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for said George A. Whiting.

JAMES G. FLANDERS, Of Counsel.

175½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Assignment of errors by George A. Whiting. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905 Edw. Kurtz clerk.

176 August 3, 1905.—Assignment of errors by the respondent W. Z. Stuart filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Assignment of Errors by W. Z. Stuart.

Now comes the said W. Z. Stuart and for his assignment of errors in the above entitled matter says that in the final order and decree heretofore made and entered in said matter by the court aforesaid there is error in the respects hereinafter set forth, that is to say:

1. The court erred in directing said Stuart to answer the question: What *has* been the yearly sales of the General Paper Company for these mills for which you are the exclusive selling agent under these contracts?

2. The court erred in directing said Stuart to answer the question: Do your books of account show the amount of yearly sales
177 by the General Paper Company as the selling agent of these different companies?

3. The court erred in directing said Stuart to answer the question : Do you keep books of account at your office in Chicago which show the amount of paper in weight and in dollars and cents sold for each mill in each year ?

4. The court erred in directing said Stuart to answer the question : Do you know without referring to those books about the yearly sales for all these defendant mills ?

5. The court erred in directing said Stuart to answer the question : What amount of paper do you sell for each, or did you sell for each of these defendant mills in the year 1900 ?

6. The court erred in directing said Stuart to answer the question : What were the gross sales for all the mills for which your company is the exclusive agent under the contracts in evidence for the year 1900 ?

7. The court erred in directing said Stuart to answer the question : What was the amount of sales in dollars and cents made for each mill for which the General Paper Company was the exclusive selling agent in the years 1901, 1902, 1903 and 1904 ?

8. The court erred in directing said Stuart to answer the question : Do you know what the amount is ? (referring to the sales referred to in the 7th assignment of error).

9. The court erred in directing said Stuart to answer the question : What was the gross amount of sales in dollars for all the companies during each year which I have referred to ?

10. The court erred in directing said Stuart to answer the question : Do you know what amount of dividends have been paid by the General Paper Company each year ?

11. The court erred in directing said Stuart to answer the question : Will you state the amount of dividends paid by the General Paper Company each year ?

178 12. The court erred in directing said Stuart to answer the question : Do your books show the gross receipts from commissions for the sale of paper ?

13. The court erred in directing said Stuart to answer the question : Do you know the gross amount of commissions received each year for the sale of paper under the contracts in evidence ?

14. The court erred in directing said Stuart to answer the question : Do you keep books showing the total gross receipts from commissions from each one of these defendant companies for the sale of paper, the expenses of the business and the net profits ?

15. The court erred in directing said Stuart to answer the question : Do you know that of your own knowledge ? (referring to the matters mentioned in the 14th assignment of error).

16. The court erred in directing said Stuart to answer the question : Do you keep books of account showing the price of paper received by each of the defendant companies and sold by your company ?

17. The court erred in directing said Stuart to appear before Robert S. Taylor, special examiner in the above entitled action, and

answer each and every of the questions put to him by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedule thereunto annexed.

18. The court erred in directing said Stuart to produce before said examiner the books, papers, records, documents, reports and contracts requested of him as set forth in said petition and schedule for the purposes of his examination in said cause and for use in evidence by the complainant in said examination.

19. The court erred in ordering that said complainant's counsel shall have the right to inspect the said books, records, papers, documents, reports and contracts.

20. The court erred in ordering that said complainant's counsel shall have the right to introduce the said books, papers, records, documents, reports and contracts and any of them in evidence in said cause.

Wherefore said W. Z. Stuart prays that the order and decree of said circuit court of the United States for the eastern district of Wisconsin in the above entitled matter, so far as it relates to said Stuart or to any of the matters above assigned as error, for the errors aforesaid and for other errors in the record and proceedings in said matter and in the order and decree aforesaid, may be reversed and that said court may be directed to enter a decree dismissing the petition in said matter so far as it relates to said Stuart or to any of the matters above assigned as error.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for said W. Z. Stuart.

JAMES G. FLANDERS, Of Counsel.

179½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Assignment of errors by W. Z. Stuart. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

180 August 3, 1905.—Assignment of errors by the respondent General Paper Co. filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Assignment of Errors by General Paper Company.

Now comes the said General Paper Company and for its assignment of errors in the above entitled matter says that in the final order and decree heretofore made and entered in said matter by the court aforesaid there is error in the respects hereinafter set forth, that is to say :

1. The court erred in directing the witness Alexander to produce the record book of said General Paper Company for the purpose of having the whole of pages 33 to 37 thereof, containing the minutes of the annual stockholders' meeting in December, 1900 offered in evidence by counsel for the United States.

181 2. The court erred in directing said Alexander after having read in evidence certain portions of the pages aforesaid to read the rest of the minutes of said stockholders' meeting which he had omitted to read.

3. The court erred in directing said Alexander to permit counsel for the United States to examine the records of the stockholders' meeting held in December, 1900 in order to test the correctness of the witness's statements in reference to the business done at said meeting.

4. The court erred in directing said Alexander to permit the examiner to copy said pages 33 to 37 inclusive of the record book of said General Paper Company for the purpose of having them offered in evidence by counsel for the United States.

5. The court erred in directing said Alexander to permit the examiner to initial pages 42 to 45 inclusive of said record book, being the minutes of the stockholders' meeting of December 10, 1901.

6. The court erred in directing said Alexander to exhibit said record book to counsel for the United States for examination in order to verify the testimony of said witness in reference to business done at the annual stockholders' meeting held December 10, 1901.

7. The court erred in directing said Alexander to read all of the

minutes of said stockholders' meeting of December 10, 1901, including certain portions which he had previously omitted to read.

8. The court erred in directing said Alexander to read the whole of the report of the committee appointed at the stockholders' meeting of December 10, 1901, including certain portions which the witness had omitted to read.

9. The court erred in directing said Alexander to answer the question: When the law and the by-laws of your company require you to keep the possession of these books, why do you part with them?

10. The court erred in directing said Alexander to state his recollection as to the balance of the report of the committee appointed at the stockholders' meeting of December 10, 1901 which he
182 had not read.

11. The court erred in directing said Alexander to answer the question, whether he refused to read the balance of said report on the ground that the testimony would tend to incriminate him.

12. The court erred in directing said Alexander to permit counsel for the United States to examine said record book or to take the same for the purpose of examining it to see whether there was anything anywhere therein beside what the witness had stated referring to the report of the committee above referred to.

13. The court erred in directing said Alexander to answer the question whether there was a meeting of the board of directors of said General Paper Company held in January, 1902.

14. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes contained in the record book of said General Paper Company of the meeting of the stockholders held December 8, 1903.

15. The court erred in directing said Alexander to look and see whether any part of the record of the proceedings of the annual stockholders' meeting of December 8, 1903 other than that which he had already read in evidence related in any way to any corporation defendant making the General Paper Company its sales agent or making a contract therefor.

16. The court erred in directing said Alexander to answer the question whether the balance of said meeting of December 8, 1903, other than that read by the witness referred to any business between said General Paper Company and the constituent mills making the contracts with it as sales agent.

17. The court erred in directing said Alexander to state the pages of said record book containing a record of said stockholders' meeting of December 8, 1903.

183 18. The court erred in directing said Alexander to read in evidence the whole of page 70 of said record book relating to the meeting of the board of directors of said General Paper Company held December 8, 1903.

19. The court erred in directing said Alexander to examine said

record book for the purpose of ascertaining the numbers of the pages comprising the entire record of said meeting of the board of directors held December 8, 1903.

20. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the meeting of the directors of said General Paper Company held December 8, 1903.

21. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the stockholders' annual meeting of said General Paper Company held in December, 1904.

22. The court erred in directing said Alexander to produce the record book of said General Paper Company for the purpose of having offered in evidence the record of all meetings of the board of directors held during the year 1900.

23. The court erred in directing said Alexander to answer the question: Do any of those meetings of the board of directors in 1900 refer to the business between any of the corporations having a contract with the General Paper Company and the General Paper Company?

24. The court erred in directing said Alexander to state what the meetings of the board of directors held in 1900 referred to.

25. The court erred in directing said Alexander to answer the questions: How many directors' meetings were there during 1900?

And will you give the dates of those meetings?

184 26. The court erred in directing said Alexander to comply with the request that he should look at the record book of said General Paper Company to see if there was a meeting of the board of directors of said company on the 18th of June, 1900.

27. The court erred in directing said Alexander to produce before the examiner the minutes of the meetings of the executive committee of said General Paper Company.

28. The court erred in directing said Alexander to answer the questions: As secretary of the General Paper Company, are you the custodian of such records? (referring to the minutes referred to in the 27th assignment of error) When did Mr. Flanders get possession of said records? When did said records leave your possession? Have you had said records within your possession within the last thirty days?

29. The court erred in directing said Alexander to state whether the treasurer's report made to the stockholders' meeting of December 8, 1903 contained the result of all the sales of paper made by the General Paper Company.

30. The court erred in directing said Alexander to state what subject said report dealt with.

31. The court erred in directing said Alexander to answer the questions: Do you know the total of sales each year by the General

Paper Company in value? Do your treasurer's reports show the total sales in value each year by the General Paper Company? Have you any books under your control showing the total sales each year of the General Paper Company?

32. The court erred in directing said Alexander to answer the question: Do your sales each year amount to in the neighborhood of ten millions of dollars in value?

33. The court erred in directing said Alexander to state whether the minutes of the stockholders of each year shows that the general sales agent made a report.

185 34. The court erred in directing said Alexander to answer the question: Does the directors' annual meeting held in December, 1900 show the presentation of a report of the sales manager?

35. The court erred in directing said Alexander to answer the same question in reference to the annual directors' meetings of 1901, 1902, 1903 and 1904.

36. The court erred in directing said Alexander to state: What dividends if any have been paid by the General Paper Company?

37. The court erred in directing said Alexander to answer the question: Do your books show the dividends paid?

38. The court erred in directing said Alexander to answer the questions: You know, do you, what dividends, if any, have been paid by the General Paper Company? and, If any dividends are paid, it is your duty to pay them?

39. The court erred in directing said Alexander to produce the contracts between said General Paper Company and various publishers for the sale of news print paper.

40. The court erred in directing said Alexander to state whether the contracts just referred to (39th assignment of error) are usually on a printed blank.

41. The court erred in directing said Alexander to answer the question: Do you know where that form of contract was procured—whether it was taken from the form of contract used by the International Paper Company or not?

42. The court erred in directing said Alexander to answer the question: During the existence of the General Paper Company has there been a pool among these mills in connection with the General Paper Company covering fibre paper or butchers' fibre paper?

43. The court erred in directing said Alexander to answer the question: Is it not a fact that certain of the mills which made butchers' fibre were compensated by the other mills and that the other mills made payments through E. A. Edmonds who distributed the money to the mills making butchers' fibre?

186 44. The court erred in directing said Alexander to answer the question: Is there not less profit in the manufacture of butchers' fibre than in any other paper?

45. The court erred in directing said Alexander to answer the question whether the Nekoosa Paper Company was compensated

for making butchers' fibre by the other companies in this combination.

46. The court erred in directing said Alexander to answer the question, whether or not Mr. E. A. Edmonds, formerly of the Falls Manufacturing Company and now of the Rhinelander Paper Company, was the clearing house through which any payments were made to compensate any mill for making butchers' fibre?

47. The court erred in directing said Alexander to answer the question, whether any of the defendants made such payments through E. A. Edmonds.

48. The court erred in directing said Alexander to answer the question: Do you know of your own knowledge that the General Paper Company or some officer of the General Paper Company did not send checks of the separate mills to Mr. E. A. Edmonds who sent the checks or divided up the money between the mills making butchers' fibre?

49. The court erred in directing said Alexander to state whether or not any of the mills not making butchers' fibre sent checks through the General Paper Company or any officer of the General Paper Company to E. A. Edmonds for such purpose.

50. The court erred in directing said Alexander to state whether the General Paper Company or any officer of said company sent the checks or the money of any of the constituent companies having contracts with it to Mr. Edmonds for the purpose of compensating the mills making butchers' fibre.

51. The court erred in directing said Alexander to state whether settlements between the mills through the General Paper
187 Company or any officer of the General Paper Company were made once in three months to compensate the mills making butchers' fibre paper.

52. The court erred in directing said Alexander to state whether there was any pool between the defendant companies since the organization of the General Paper Company on any other grades of paper.

53. The court erred in directing said Alexander to answer the question: Do the books which are kept under your direction or by you show the payment by any of the defendant mills since the organization of the General Paper Company to any of the other defendant mills of any sum of money to compensate any of the defendant mills making butchers' fibre?

54. The court erred in directing said Alexander to state whether he had any discussion about the Manufacturers Paper Company acting as sales agent for all these defendant mills, or a part of them, at some meeting in Chicago, which may have been prior to May 26, 1900, at Mr. Brocklebank's office, at which Mr. Garrison and Mr. Nash may have been present.

55. The court erred in directing said Alexander to answer the question: Well, you recollect such meeting now, do you?

56. The court erred in directing said Alexander to answer the

question: Now I ask if you did not attend a meeting at the Grand Pacific hotel in Chicago at which you were present, Mr. Brocklebank, Mr. Garrison, Mr. Nash, Mr. Whiting, Mr. Kimberly, Mr. Stuart and perhaps others, at which meeting a discussion was had and a proposition made to the Manufacturers Paper Company to act as selling agent.

57. The court erred in directing said Alexander to answer the question: Do you recollect any such meeting?

58. The court erred in directing said Alexander to answer the question: Did you make a statement to anyone after that meeting of what occurred at that meeting (referring to the meeting described in the 56th assignment of error)?

188 59. The court erred in directing said Alexander to answer the following question: Did you not attend a meeting in Chicago at the Grand Pacific hotel at which you were present, Mr. Brocklebank of the Manufacturers Paper Company, Mr. J. A. Kimberly, Mr. T. E. Nash, Mr. F. Garrison, Mr. George A. Whiting, Mr. A. N. Pride, Mr. John Van Nortwick, Mr. Charles Babcock—all of whom except Mr. Brocklebank were afterwards directors or officers of the General Paper Company—at which meeting you discussed the plans for organizing or for procuring the General Paper Company to act as the exclusive sales agent of these defendants, or some of them, the Manufacturers Paper Company I mean, and at which you afterwards discussed the plans of organizing the General Paper Company? I mean this meeting held sometime in March, 1900.

60. The court erred in directing said Alexander to answer the question: At any meeting held in January, 1902, or about that time, was the subject of making any arrangement with the Manufacturers Paper Company discussed and is there any record of any such discussion?

61. The court erred in directing said Alexander to answer the question: Do you know whether at any time the subject was discussed at the board of directors' meeting as to making any arrangement with the Manufacturers Paper Company about the sale of paper in the territory west of Chicago?

62. The court erred in directing said Alexander to state whether he gave out a statement of what occurred at a directors' meeting of the General Paper Company held in Appleton, Wisconsin on June 18th, 1900 to the trade paper.

63. The court erred in directing said Alexander to state whether at the city of Appleton, after the meeting of the board of directors on June 18, 1900 he stated to a reporter of the trade journal in words or in substance that the contracts closing the matter were all ready and the only point to be settled was as to who was to sign them.

189 Finally it was settled that all the mills in the State making print, manilla and fibre would sign except the Marinette & Menominee Paper Company, and whether he then gave a list of the companies who had signified their willingness to enter into contracts.

64. The court erred in directing said Alexander to answer the question: Did you make that statement during the meeting of the board? (referring to the question in the 63d assignment of error)

65. The court erred in directing said Alexander to answer the question: Can you, in a general way, state what the principal product of the defendant mills is, whether it is news print paper or other classes?

66. The court erred in directing the witness George A. Whiting to answer the question: Did you have any meeting at Chicago where you discussed the subject of making the Manufacturers Paper Company the selling agent of these defendants or any of them?

67. The court erred in directing said Whiting to state whether he had ever had any business with Mr. J. C. Brocklebank.

68. The court erred in directing said Whiting to answer the question: Was this (the organization of a company for the purpose of selling paper) finally agreed on between you gentlemen before the final organization of the company?

69. The court erred in directing said Whiting to answer the question: Did you have any idea prior to May 26th, 1900 what proportion of the stock your company was going to get?

70. The court erred in directing said Whiting to answer the question: Prior to the time you subscribed for the stock for your mill, did you have any understanding with the other gentlemen who went into this organization as to the amount of stock which should be given to each one of you?

71. The court erred in directing said Whiting to answer the question: Did you mean to say that you, as one of the principal
190 men, caused the General Paper Company to be organized to handle more than ten million dollars of products per year and that you do not recollect the plan on which it was organized?

72. The court erred in directing said Whiting to answer the question: You have no recollection of an understanding between you gentlemen as to the basis of the division of the stock at all?

73. The court erred in directing said Whiting to answer the question: You have no recollection of meeting with these gentlemen and agreeing on the form of a contract?

74. The court erred in directing said Whiting to answer the question: You remember that a contract was adopted at some meeting, do you?

75. The court erred in directing said Whiting to answer the question: Did you ever have any talk with Mr. Bossard about making the General Paper Company its selling agent?

76. The court erred in directing said Whiting to answer the question: Did you on or about February 5, 1902, which is the date — which the Itasca Paper Company entered into a contract with the General Paper Company making it its exclusive selling agent for certain grades of paper, have any conversation with Mr. Bossard of that company about entering into that contract with the General Paper Company?

77. The court erred in directing said Whiting to state whether Mr. H. C. McNair declined to take stock in the General Paper Company at a talk had between the witness and Mr. McNair at Appleton about entering into a contract with the General Paper Company before the organization of the General Paper Company.

78. The court erred in directing said Whiting to state what conversation he had with Mr. McNair in Chicago one day either in the lobby of the *the* General Paper Company or at some hotel.

79. The court erred in directing said Whiting to answer the question: Did you have any conversation with him (McNair) about the Northwest Paper Company entering into a contract with the General Paper Company?

80. The court erred in directing said Whiting to answer the question: How do you know he (McNair) had concluded to go in? (meaning into the General Paper Company.)

81. The court erred in directing said Whiting to state whether he had any conversation with McNair in reference to the Northwest Paper Company making the General Paper Company its selling agent.

82. The court erred in directing said Whiting to answer the question: State whether you did or did not have any conversation with Mr. McNair in which you discussed with him the subject of the Northwest Paper Company making the General Paper Company its general agent prior to the time it went into the combination.

83. The court erred in directing said Whiting to answer the question: Did you have any conversation with Mr. McNair prior to the time his company entered into this contract with the General Paper Company making it the exclusive selling agent—about his company making any such contract?

84. The court erred in directing said Whiting to answer the question: Do you not know from your own knowledge that for nearly two years the Northwest Paper Company refused to make the General Paper Company its selling agent?

85. The court erred in directing said Whiting to state whether at the last annual meeting of the General Paper Company held in December, 1904 he heard the subject discussed as to the Petoskey Fibre Paper Company renewing its contract.

86. The court erred in directing said Whiting to answer the question: Was there any discussion at that meeting about dropping Mr. Cheeseman from the board of directors because his company had not entered into a contract renewing its contract making the General Paper Company its selling agent?

192 87. The court erred in directing said Whiting to answer the question: After the organization of the General Paper Company did you have any conversation with any of the officers of the International Paper Company about keeping out of this territory west of Chicago?

88. The court erred in directing said Whiting to answer the ques-

tion : Did you ever hear of a pool on butchers' fibre between any of the defendant mills?

89. The court erred in directing said Whiting to state whether he never heard of an arrangement whereby certain of the defendant mills made payments through the General Paper Company or some officer of the General Paper Company to certain other of the defendant mills which manufactured butchers' fibre.

90. The court erred in directing said Whiting to answer the question : Did you ever hear of such an arrangement between any of these parties? (referring to the arrangement mentioned in the 89th assignment of error).

91. The court erred in directing the witness W. Z. Stuart to answer the question : What *has* been the yearly sales of the General Paper Company for these mills for which you are the exclusive selling agent under these contracts?

92. The court erred in directing said Stuart to answer the question : Do your books of account show the amount of yearly sales by the General Paper Company as the selling agent of these different companies?

93. The court erred in directing said Stuart to answer the question : Do you keep books of account at your office in Chicago which show the amount of paper in weight and in dollars and cents sold for each mill in each year?

94. The court erred in directing said Stuart to answer the question : Do you know without referring to those books about the yearly sales for all these defendant mills?

193 95. The court erred in directing said Stuart to answer the question : What amount of paper do you sell for each, or did you sell for each of these defendant mills in the year 1900?

96. The court erred in directing said Stuart to answer the question : What were the gross sales for all the mills for which your company is the exclusive agent under the contracts in evidence for the year 1900?

97. The court erred in directing said Stuart to answer the question : What was the amount of sales in dollars and cents made for each mill for which the General Paper Company was the exclusive selling agent in the years 1901, 1902, 1903 and 1904?

98. The court erred in directing said Stuart to answer the question : Do you know what the amount is? (referring to the sales referred to in the 97th assignment of error).

99. The court erred in directing said Stuart to answer the question : What was the gross amount of sales in dollars for all the companies during each year which I have referred to?

100. The court erred in directing said Stuart to answer the question : Do you know what amount of dividends have been paid by the General Paper Company each year?

101. The court erred in directing said Stuart to answer the question : Will you state the amount of dividends paid by the General Paper Company each year?

102. The court erred in directing said Stuart to answer the question: Do your books show the gross receipts from commissions for the sale of paper?

103. The court erred in directing said Stuart to answer the question: Do you know the gross amount of commissions received each year for the sale of paper under the contracts in evidence?

104. The court erred in directing said Stuart to answer the question: Do you keep books showing the total gross receipts from commissions from each one of these defendant companies for the sale of paper, the expenses of the business and the net profits?

105. The court erred in directing said Stuart to answer the question: Do you know that of your own knowledge? (referring to the matters mentioned in the 104th assignment of error).

106. The court erred in directing said Stuart to answer the question: Do you keep books of account showing the price of paper received by each of the defendant companies and sold by your company?

107. The court erred in directing said L. M. Alexander, George A. Whiting and W. Z. Stuart, and each of them, to appear before Robert S. Taylor, special examiner in the above entitled action, and answer each and every of the questions put to them respectively by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedules thereunto annexed.

108. The court erred in directing said Alexander, Whiting and Stuart, and each of them, to produce before said examiner the books, papers, records, documents, reports and contracts requested of them respectively as set forth in said petition and schedules for the purposes of their respective examinations in said cause and for use in evidence by the complainant in said examination.

109. The court erred in ordering that said complainant's counsel shall have the right to inspect the said books, records, papers, documents, reports and contracts.

110. The court erred in ordering that said complainant's counsel shall have the right to introduce the said books, papers, records, documents, reports and contracts and any of them in evidence in said cause.

Wherefore said General Paper Company prays that the order and decree of said circuit court of the United States for the eastern district of Wisconsin in the above entitled matter, for the errors aforesaid and for other errors in the record and proceedings in said matter and in the order and decree aforesaid, may be reversed and that said court may be directed to enter a decree dismissing the petition of the United States of America in said matter.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for said General Paper Company.

JAMES G. FLANDERS, Of Counsel.

195½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.* defendants. Assignment of errors by General Paper Company. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz clerk.

196 August 3, 1905.—Petition of L. M. Alexander for appeal filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Now comes Lewis M. Alexander and prays for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of said circuit court heretofore made and filed in said matter so far as the same relates to said Alexander or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that pending said appeal further proceedings under said final order and decree, so far as the same relates to said Alexander, may be stayed by the order of this court.

WINKLER, FLANDERS, SMITH, BOTTUM
& FAWSETT AND
DE FREES, BRACE & RITTER,

Solicitors for said Lewis M. Alexander *Solicitors*.

JAMES G. FLANDERS, Of Counsel.

196½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Petition for allowance of appeal by L. M. Alexander. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

197 August 3, 1905.—Petition of George A. Whiting for appeal filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Now comes George A. Whiting and prays for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of said circuit court heretofore made and filed in said matter so far as the same relates to said Whiting or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that pending said appeal further proceedings under said final order and decree, so far as the same relates to said Whiting, may be stayed by the order of this court.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for said George A. Whiting.

JAMES G. FLANDERS, Of Counsel.

197½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Petition for allowance of appeal by George A. Whiting. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

198 August 3, 1905.—Petition of W. Z. Stuart for appeal filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Now comes William Z. Stuart and prays for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of said circuit court heretofore made and filed in said matter so far as the same relates to said Stuart or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that pending said appeal further proceedings under said final order and decree, so far as the same relates to said Stuart, may be stayed by the order of this court.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for said William Z. Stuart.

JAMES G. FLANDERS, Of Counsel.

198½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Petition for allowance of appeal by W. Z. Stuart. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

199 August 3, 1905.—Petition of General Paper Company for appeal filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Now comes General Paper Company and prays for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of said circuit court heretofore made and filed in said matter and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States and that pending said appeal further proceedings under said final order and decree may be stayed by order of this court.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for said General Paper Company.

JAMES G. FLANDERS, Of Counsel.

199½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Petition for allowance of appeal by General Paper Company. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

200 August 3, 1905.—Bond of L. M. Alexander on appeal filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Know all men by these presents, that we, Lewis M. Alexander as principal and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars (\$1000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves and our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this second day of August, A. D. 1905.

Whereas said Lewis M. Alexander has taken and prosecuted his appeal to the Supreme Court of the United States to reverse
 201 the final order and decree heretofore made and filed in the above entitled matter by said circuit court of the United States for the eastern district of Wisconsin, so far as the same relates to said Alexander or to any of the matters assigned by him as error in his assignment of errors in said matter:

Now, therefore, the condition of this obligation is such that if the above named Lewis M. Alexander shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

LEWIS M. ALEXANDER.

[SEAL.]

Signed, sealed and delivered in presence of

CHARLES E. MONROE.

GEO. F. DOVE.

THE UNITED STATES FIDELITY &
 GUARANTY CO., [CORPORATE SEAL.]
 By STEPHEN H. HOFF, Its Att'y in Fact.

The above and foregoing bond is hereby approved.

WM. H. SEAMAN,
Circuit Judge.

201½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company, *et al.*, defendants. Bond on appeal of L. M. Alexander. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905 Edw. Kurtz clerk.

202 August 3, 1905.—Bond of George A. Whiting on appeal filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Know all men by these presents, that we, George A. Whiting as principal and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars (\$1000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves and our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this second day of August, A. D. 1905.

203 Whereas said George A. Whiting has taken and prosecuted his appeal to the Supreme Court of the United States to reverse the final order and decree heretofore made and filed in the above entitled matter by said circuit court of the United States for the eastern district of Wisconsin, so far as the same relates to said Whiting or to any of the matters assigned by him as error in his assignment of errors in said matter:

Now, therefore, the condition of this obligation is such that if the

above named George A. Whiting shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

GEORGE A. WHITING, [SEAL.]
By JAMES G. FLANDERS, His Attorney.

Signed, sealed and delivered in the presence of
CHARLES E. MONROE.
GEO. F. DOVE.

THE UNITED STATES FIDELITY &
GUARANTY CO., [CORPORATE SEAL]
By STEPHEN H. HOFF, Its Att'y in Fact.

The above and foregoing bond is hereby approved.

WM. H. SEAMAN,
Circuit Judge.

203½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company et al., defendants. Bond on appeal of George A. Whiting. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

204 August 3, 1905.—Bond of W. Z. Stuart on appeal filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Know all men by these presents, that we, William Z. Stuart as principal and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland,

as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars (\$1000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves and our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this second day of August, A. D. 1905.

Whereas said William Z. Stuart has taken and prosecuted
205 his appeal to the Supreme Court of the United States to reverse the final order and decree heretofore made and filed in the above entitled matter by said circuit court of the United States for the eastern district of Wisconsin, so far as the same relates to said Stuart or to any of the matters assigned by him as error in his assignment of errors in said matter:

Now, therefore, the condition of this obligation is such that if the above named William Z. Stuart shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

WILLIAM Z. STUART, [SEAL-]
By JAMES G. FLANDERS, His Attorney.

Signed, sealed and delivered in presence of

CHARLES E. MONROE.
GEO. F. DOVE.

THE UNITED STATES FIDELITY &
GUARANTY CO., [CORPORATE SEAL-]
By STEPHEN H. HOFF, Its At'y in Fact.

The above and foregoing bond is hereby approved.

WM. H. SEAMAN,
Circuit Judge.

205½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Bond on appeal of William Z. Stuart. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

206 August 3, 1905.—Bond of General Paper Company on appeal filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Know all men by these presents, that we General Paper Company as principal and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars (\$1000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this second day of August, A. D. 1905.

Whereas the said General Paper Company has taken and prosecuted its appeal to the Supreme Court of the United States
 207 to reverse the final order and decree heretofore made and filed in the above entitled matter by said circuit court of the United States for the eastern district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above named General Paper Company shall prosecute its said appeal to effect and answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

GENERAL PAPER COMPANY, [SEAL.]
 By LEWIS M. ALEXANDER, Secretary.

Signed, sealed and delivered in presence of
 CHARLES E. MONROE.
 GEO. F. DOVE.

THE UNITED STATES FIDELITY &
 GUARANTY CO., [CORPORATE SEAL.]
 By STEPHEN H. HOFF, Its Att'y in Fact.
 THE UNITED STATES FIDELITY &
 GUARANTY COMPANY,
 By ———.

Signed, sealed and delivered in presence of
 ———.

The above and foregoing bond is hereby approved.

WM. H. SEAMAN,
Circuit Judge.

207½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Bond on appeal of General Paper Co. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905 Edw. Kurtz clerk.

208 Order Allowing Appeal of L. M. Alexander.

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

The above named Lewis M. Alexander having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree heretofore made and filed in the above entitled matter so far as the same relates to said Alexander or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that pending said appeal further proceedings under said decree may be stayed by the order of this court; and said Alexander having filed a bond with surety satisfactory to this court in the penalty of one thousand dollars (\$1000.00) conditioned on the prosecution of said appeal to effect by said Alexander and to answer all damages and costs if said appellant fail to make said appeal good:

It is now therefore ordered that said appeal of said Alexander be, and the same is, hereby allowed; that said bond be, and the same is, hereby approved, and that further proceedings under said final order and decree be, and the same are, hereby stayed pending said appeal.

WM. H. SEAMAN,
Circuit Judge.

Dated August 3rd, 1905.

208½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company, defendants. Order allowing appeal of Lewis M. Alexander and staying proceedings. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

209 Order Allowing Appeal of George A. Whiting.

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

The above named George A. Whiting having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree heretofore made and filed in the above entitled matter so far as the same relates to said Whiting or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that pending said appeal further proceedings under said decree may be stayed by the order of this court; and said Whiting having filed a bond with surety satisfactory to this court in the penalty of one thousand dollars (\$1000.00) conditioned on the prosecution of said appeal to effect by said Whiting and to answer all damages and costs if said appellant fail to make said appeal good:

It is now therefore ordered that said appeal of said Whiting be, and the same is, hereby allowed; that said bond be, and the same is, hereby approved, and that further proceedings under said final order and decree be, and the same are, hereby stayed pending said appeal.

Dated August 3d, 1905.

WM. H. SEAMAN,
 Circuit Judge.

209½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company et al., defendants. Order al-

lowing appeal of George A. Whiting and staying proceedings. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz clerk.

210 Order Allowing Appeal of W. Z. Stuart.

In the Circuit Court of the United States in and for the Eastern
District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

The above named William Z. Stuart having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree heretofore made and filed in the above entitled matter so far as the same relates to said Stuart or to any of the matters assigned by him as error in his assignment of errors filed herewith, and that pending said appeal further proceedings under said decree may be stayed by the order of this court; and said Stuart having filed a bond with surety satisfactory to this court in the penalty of one thousand dollars (\$1000.00) conditioned on the prosecution of said appeal to effect by said Stuart and to answer all damages and costs if said appellant fail to make said appeal good:

It is now therefore ordered that said appeal of said Stuart be, and the same is, hereby allowed; that said bond be, and the same is, hereby approved, and that further proceedings under said final order and decree be, and the same are, hereby stayed pending said appeal.

Dated August 3d, 1905.

WM. H. SEAMAN,
Circuit Judge.

210½ [Endorsed:] In the circuit court of the U. S., eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Order allowing appeal of William Z. Stuart and staying proceedings. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905 Edw. Kurtz, clerk.

211 Order Allowing Appeal of General Paper Co.

In the Circuit Court of the United States in and for the Eastern
District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant,
vs.
GENERAL PAPER COMPANY ET AL., Defendants.

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing L. M. Alexander, George A. Whiting, and W. Z. Stuart to answer certain questions, comply with certain requests, and produce certain books, records, papers, reports, and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

The above named General Paper Company having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of this court heretofore made and filed in the above entitled matter, and that pending said appeal further proceedings under said decree may be stayed by the order of this court; and said General Paper Company having filed a bond with surety satisfactory to this court in the penalty of one thousand dollars (\$1000) conditioned on the prosecution of said appeal to effect by said General Paper Company and to answer all damages and costs if said appellant fail to make said appeal good:

It is now therefore ordered that said appeal of said General Paper Company be, and the same is, hereby allowed; that said bond be, and the same is, hereby approved, and that further proceedings under said final order and decree be, and the same are, hereby stayed pending said appeal.

WM. H. SEAMAN,
Circuit Judge.

Dated August 3rd, 1905.

211½ [Endorsed :] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Order allowing appeal of General Paper Company and staying proceedings Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz clerk.

212 August 12, 1905.—Stipulation of parties as to service of
subpœna filed as follows:—

Stipulation.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET ALS., Defendants. }

In the Matter of the Appeals of GENERAL PAPER COMPANY, L. M. ALEXANDER, W. Z. STUART, and GEORGE A. WHITING from the Order of the Above Court Directing the said Witnesses, Alexander, Stuart, and Whiting, to Answer Questions, etc.

It is hereby stipulated and agreed that the subpoena, a copy of which appears as Petitioner's Exhibit 26 in the record herein, was duly served upon the said witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart, prior to the 16th day of May, 1905.

FRANK B. KELLOGG,
 JAMES M. BECK, AND
 DAVIS, KELLOGG & SEVERANCE,
 Solicitors for Complainant, The United States of America.
 WINKLER, FLANDERS, SMITH,
 BOTTUM & FAWSETT AND
 DEFREES, BRACE & RITTER,
 Solicitors for General Paper Company and
 Witnesses Alexander, Stuart, and Whiting.

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Jas. G. Flanders, Volume 1.

Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of L. M. Alexander.

First Day, May 16 / 05.

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ROBERT S. TAYLOR,
 Special Examiner.

214 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

MILWAUKEE, WISCONSIN, May 16, 1905.

Pursuant to the notice by the special examiner herein duly served upon all the parties to this cause, the hearing came on before the examiner in room 310 on the third floor of the Federal building, in the city of Milwaukee, Wisconsin, the day and year above written, at ten o'clock in the forenoon.

Frank B. Kellogg and James M. Beck, special Assistant Attorneys General of the United States, C. A. Severance and Robert E. Olds, appearing on behalf of the complainant, and James G. Flanders, William Brace, and John Barnes appearing on behalf of the defendants.

All parties to said cause being represented, the following proceedings were had :

215 L. M. ALEXANDER, a witness on behalf of the petitioner, being duly sworn by the examiner, testified as follows :

Direct examination.

By Mr. KELLOGG :

Q. Mr. Alexander, where do you reside ?

A. Milwaukee, Wisconsin.

Q. Are you an officer of the General Paper Company ?

A. Yes sir.

Mr. KELLOGG : I offer in evidence a certified copy of the articles of association of the General Paper Company, together with the two amendments thereto, one adopted by the corporation on December 9, 1902, the other adopted by the association on December 8, 1903.

Marked Petitioner's Exhibit 1.

Mr. KELLOGG : I offer in evidence certified copies of the articles of association and amendments thereto of the following companies, and desire that the examiner mark them exhibits in the order in which I will offer them.

(The certified copies were marked, Petitioner's Exhibits 2 to 25 inclusive, respectively.)

Mr. FLANDERS : I wish to interpose a formal objection to the receipt of any evidence under the bill of complaint, or petition, as it is called, on the ground that it fails to state a cause of action against the defendants, or either of them ; and I wish to enter a special objection on the same ground, on behalf of the Riverside Fibre and

Paper Company; and if you have no objection I would like it considered that this objection was entered before the introduction of any evidence.

Mr. KELLOGG: There is no objection to that.

Mr. FLANDERS: And now I may state another thing which perhaps will facilitate matters a little bit: It is understood between Mr. Barnes and myself, Mr. Barnes representing the Rhinelander Paper Company, that in so far as any objections are made by me they are to be entered on behalf of his client as well as mine unless he directs to the contrary.

Mr. KELLOGG: There is no objection to that.

Mr. FLANDERS: Now may I ask you, these exhibits are all certified copies, are they?

Mr. KELLOGG: Yes sir; we have asked for certified copies and the amendments thereto.

Mr. FLANDERS: I think this will save your time a little bit, if it is considered that our objection to the introduction of each and every of those articles of association is considered as made on the ground that each and every of them is irrelevant, incompetent and immaterial.

Mr. BECK: I understand, Mr. Flanders, you do not object to the mere mode of proof.

Mr. FLANDERS: No; the objection goes to the substance of the offers. And it may be considered as made to each one?

Mr. KELLOGG: To each one as offered, yes. I don't understand that Mr. Flanders intends that objection to apply to any technical certification.

Mr. FLANDERS: No, no.

Mr. KELLOGG: As to whether they are duly exemplified or certified?

Mr. FLANDERS: No, assuming that they are in form certified; I make no objection on the ground of any defective certification.

Mr. KELLOGG: Yes, that is all right. I offer the certified copies of the articles of incorporation of the following companies:

Exhibit 2, the Itasca Paper Company; Exhibit 3, the Hennepin Paper Company; Exhibit 4, Wolf River Paper and Fiber Company; Exhibit 5, Atlas Paper Company; Exhibit 6, Kimberly and Clark Company; Exhibit 7, Riverside Fibre Company; and the amendment changing the name to Riverside Fibre and Paper Company; Exhibit 8, Wausau Paper Mills Company; Exhibit 9, Centralia Pulp and Water Power Company; Exhibit 10, Combined Locks Paper Company; Exhibit 11, Dells Paper and Pulp Company; Exhibit 12, Grand Rapids Pulp and Paper Company; Exhibit 13, Menasha Paper Company; Exhibit 14, the C. W. Howard Company; Exhibit 15, the Nekoosa Paper Company; Exhibit 16, the Falls Manufacturing Company; Exhibit 17, Flambeau Paper Company; Exhibit 18, the John Edwards Manufacturing Company; Exhibit 19, the Wisconsin River Paper and Pulp Company;

Exhibit 20, Tomahawk Pulp and Paper Company; Exhibit 21, Northwest Paper Company; Exhibit 22, Consolidated Waterpower and Paper Company; Exhibit 23, Manufacturers Paper Company.

I will withdraw No. 23.

Exhibit 24, the Petoskey Fibre Paper Company; Exhibit 25, Rhinelander Paper Company.

Q. Where is your office, Mr. Alexander?

A. It is in Milwaukee and Chicago.

218 Q. You have an office here in Milwaukee.

A. I have an office here, yes sir.

Q. Mr. Alexander, did you attend a meeting in Milwaukee on the 26th of May, 1900, for the organization of the General Paper Company?

A. Yes sir.

Q. Who were present at that meeting?

A. I don't recall.

Q. Have you got a record showing the number of persons present?

A. Yes sir.

Q. Will you produce it, please?

Mr. FLANDERS: Well, what is the record?

WITNESS: The minutes.

Mr. FLANDERS: The record of the minutes of the meeting?

WITNESS: Yes.

Q. I will ask a few questions to illustrate that. You are the secretary of the General Paper Company, are you not?

A. I am.

Q. And treasurer of the General Paper Company?

A. Yes sir.

Q. As secretary you have charge of the minute book containing the records of the meetings of the board of directors and stockholders of the company?

A. Yes sir.

Q. Have you also the stock books and stock ledger, showing the stockholders of the company?

A. Yes sir.

Q. And all transfers of stock?

A. Yes sir.

219 Q. Can you remember the names of the persons present at the meeting on the 26th of May, 1900, in Milwaukee?

A. I could not.

Q. Was Mr. J. A. Kimberly present?

A. He was.

Q. Was Mr. J. C. Kimberly present?

A. I could not say.

Q. Was Mr. W. Z. Stuart present?

A. I think he was.

Q. Was Mr. T. E. Nash present?

A. I think he was.

Q. Was Mr. George A. Whiting present?

A. I think he was.

Q. Mr. A. M. Pride?

A. I think he was.

Q. Mr. D. E. Reese?

A. I think he was.

Q. You were present, you said, I believe.

A. Yes.

Q. Mr. F. Garrison.

A. I think he was.

Q. Mr. C. W. Howard.

A. I think he was present.

Q. Mr. C. A. Babcock.

A. I think he was present.

Q. Mr. N. H. Brokaw.

A. I couldn't say.

Q. Mr. John Daly?

A. I can't say.

220 Q. Mr. W. L. Edmonds.

A. I think he was.

Q. Mr. E. F. Harmon.

A. I think he was.

Q. Mr. D. R. Davis.

A. I think he was.

Q. And Mr. F. C. Shattuck.

A. I couldn't say.

Q. Were there any other gentlemen present?

A. Not that I recall.

Q. Who acted as secretary of the meeting?

A. I think Mr. W. Z. Stuart acted as secretary of that meeting, I am not sure.

Q. Who presided at the meeting?

A. I don't recall.

Q. Were there minutes kept of that meeting?

A. I think so.

Q. Have you those minutes?

A. I think so.

Q. Will you produce them, please?

Mr. FLANDERS: You have got them here, you mean?

WITNESS: Yes sir.

Mr. FLANDERS: Well, hand them over to me, please.

(Witness leaves stand to get records.)

Mr. FLANDERS: Mr. Kellogg, the entire minutes of the meeting of organization of the General Paper Company is kept in its records, including the articles of organization and association and the by-laws, the first meeting of the subscribers, or the first meeting of the incorporators, and the first meeting of the stockholders, and
221 the first meeting of the board of directors are contained in the first twenty-six pages of this book which I hold in my

hands, and we are willing that you should inspect those twenty-six pages; but as to the balance of the book we decline, in the present state of the record, to submit it to your inspection, and will insist upon its being sealed.

Mr. KELLOGG: That is as far as I have asked for the testimony at present. I do not wish to waive the right to demand the production of the rest or inspect the rest, but will pass it until we examine as to other transactions.

Mr. FLANDERS: The first twenty-six pages of the record book of the General Paper Company are submitted to counsel upon the other side for inspection.

(Said record inspected by Mr. Kellogg and Mr. Beck.)

Q. I show you the book furnished me by counsel—the first twenty-six pages of the book furnished me by counsel—and ask you if this is the original record of the first meeting for organization by the incorporators, the first stockholders' meeting and the first directors' meeting of the General Paper Company.

Mr. FLANDERS: That is admitted, Mr. Kellogg; we admit that.

Q. Does this contain the correct first list of the stockholders of the General Paper Company?

A. It does.

Q. This list of subscriptions, contained on pages 16 and 17, is the correct list?

A. It is.

222 Q. Did you enter that list in the book yourself?

A. No sir.

Mr. FLANDERS: The list are the original subscriptions, aren't they, Mr. Kellogg?

Mr. KELLOGG: I know, but I mean the headings here.

WITNESS: No sir.

Q. You did not?

A. No sir.

Q. Whose writing is this?

A. I couldn't tell you.

Q. You don't know the writing?

A. No sir.

Mr. KELLOGG: I offer in evidence this list of stockholders as follows:—

Mr. FLANDERS: That is taken subject to our objection as incompetent, irrelevant and immaterial.

Mr. KELLOGG: I offer it as the original subscription of stock.

Mr. FLANDERS: Same objection.

The witness reads from page 16 as follows:

"Each of the undersigned hereby subscribes for the number of shares of stock in General Paper Company set opposite the name of each subscriber, and agrees to pay therefor the full par value thereof.

Name.	Residence.	No of shares.	Par value.
E. A. Edmunds.....	Oconto Falls.....	13	\$1,300.00
T. E. Nash.....	Grand Rapids, Wis.....	30	3,000.00
J. S. Van Nortwick.....	Appleton.....	64	6,400.00
F. Garrison.....	Grand Rapids, Wis.....	20	2,000.00

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L. M. Alexander.....	Milwaukee, Wis.....	30	3,000.00
John Daly by E. T. H....	Grand Rapids, Wis.....	15	1,500.00
E. T. Harmon.....	Grand Rapids, Wis.....	17	1,700.00
A. M. Pride.....	Tomahawk.....	15	1,500.00
W. L. Edmunds.....	Wausau.....	40	4,000.00
D. R. Davis.....	Eau Claire.....	50	5,000.00
B. F. Nelson.....	Minneapolis.....	29	2,900.00
C. W. Howard.....	Menasha.....	40	4,000.00
C. A. Babcock.....	Menasha.....	25	2,500.00
J. A. Kimberly.....	Neenah.....	25	2,500.00

Total for that page (p. 16)..... 413 \$41,300.00

WITNESS: On page 17:

Each of the undersigned hereby subscribes for the number of shares of stock set opposite the name of each subscriber and agrees to pay therefor the full par value thereof:

Name.	Residence.	No of shares.	Par value.
J. A. Kimberly.....	Neenah.....	100	\$10,000.0
J. C. Kimberly, by J. A. K.	Neenah.....	5	500.0
W. Z. Stuart.....	Neenah.....	50	5,000.0
E. T. Harmon.....	Grand Rapids.....	5	500.0
John Daly.....	Grand Rapids.....	20	2,000.0
L. M. Alexander.....	Port Edwards, Wis.....	50	5,000.0
A. M. Pride.....	Tomahawk.....	5	500.0
C. A. Babcock.....	Neenah.....	5	500.0
George A. Whiting.....	Neenah.....	50	5,000.0
C. W. Howard.....	Neenah.....	10	1,000.0
F. Garrison.....	Centralia.....	25	2,500.0
T. E. Nash.....	Centralia.....	100	10,000.0
224 F. C. Shattuck...	Neenah.....	5	500.00
E. A. Edmonds...	Oconto Falls.....	5	500.00
D. E. Reese.....	Combined Locks.....	50	5,000.00
D. R. Davis.....	Eau Claire.....	50	5,000.00
N. H. Brokaw (by W. L. Edmunds)	Kawkona.....	30	3,000.00

W. L. Edmonds.....	Wausau	20	2,000.00
(B. F. Nelson.....)	Minneapolis	1	100.00
(J. F. Van Nortwick.....)	Appleton.....	1	100.00

(WITNESS: Those marked with brackets were subscribed for June 18, 1900.)

H. M. French.....	Chicago, Ill.....	1	100.00
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(This share subscribed 12/10/1900.)

Totals.....	588	58,800.00
Less H. M. French, canceled	1	100.00
Net	587	58,700.00
Brought over from other list.....	413	41,300.00
Total subscribed.....	1000	100,000.00

Q. This list was made and signed at the time, with the exception of those two subscriptions, entered afterwards.

A. I can't say.

Q. Were you present at that meeting?

A. I was present.

Q. During all the time of the meeting?

A. Not all of the time, no sir.

Q. Did you sign at that meeting?

A. I did.

Q. Well, was this the first complete stock list of the corporation?
225

A. I think on page 17 was the first complete stock list excepting the last three signatures, for organization purposes.

Q. You think those entered on page 17 were entered first?

A. Yes sir.

Q. Except the last three signatures.

A. Yes sir.

Q. Those were the subscribers of stock at that meeting for organization on the 26th day of May, 1900.

A. Yes sir.

Q. When was the other list made?

A. I don't recall the exact date.

Q. You don't recall it?

A. No sir.

Q. Well, was it or was it not made at that time?

A. I don't think it was made that same day.

Q. Well, was it made shortly after that?

A. I think it was.

Q. How long after it?

A. I don't recall.

Q. Well, I will take the first name on page 17, Mr. J. A. Kimberly

of Neenah, Wisconsin; was he at that time an officer and stockholder in a paper mill, one of these defendants?

A. I think he was.

Q. What company?

A. The Kimberly Clark Company.

Q. One of these defendants.

A. Yes sir.

Q. He is still connected with that company?

226 A. I think he is.

Q. As an officer?

A. Yes sir.

Q. And as a stockholder.

A. Yes sir.

Q. He has been president, ever since the organization of the General Paper Company, has he not, of the Kimberly and Clark Company that you refer to?

A. I think he has.

Q. He has also been president of the General Paper Company?

A. Yes sir.

Q. From the time of its organization to the present time?

A. Yes sir.

Q. I see he subscribes for one hundred shares; he made that subscription at that time, did he?

A. Yes sir.

Q. Who is J. C. Kimberly, the next subscriber?

A. He is a son of J. A. Kimberly.

Q. What company was he at that time connected with?

A. I couldn't say.

Q. You don't know what company?

A. No sir, I do not know. Only as an agent.

Q. What?

A. Only as an agent.

Q. Wasn't he at that time connected with the Atlas Paper Company?

A. I couldn't tell you.

Q. You don't know?

A. No sir.

227 Q. Mr. W. Z. Stuart, was he connected with any paper company at that time?

A. I couldn't tell you.

Q. Wasn't he connected with some of Mr. Kimberly's companies?

A. He represented them as a selling agent, that is all I know.

Q. He is a son-in-law of Mr. J. A. Kimberly?

A. Yes sir.

Q. And represented his companies?

A. Yes sir.

Q. He has been connected with the General Paper Company ever since its organization, has he not?

A. Yes sir.

Q. As what officer?

A. Well, as second vice president for a short time, and as sales manager part of the time.

Q. As one or the other of those officers all the time?

A. No sir.

Q. When did he quit the employ of the company?

A. He is in the employ of the company now.

Q. Well, what other position has he held with the company?

A. He has been a director and a stockholder all the time.

Q. What position does he occupy now?

A. He is second vice president.

Q. How long has he been second vice president?

A. I don't know exactly; about a year and a half, I think.

Q. When did he commence with the company?

A. As an active person in the company?

Q. Yes sir.

228 A. I don't remember the exact date; 1901, I think. I am not positive about that date.

Q. Will the records of the meetings of your directors and stockholders show?

Mr. FLANDERS: We object to that, as irrelevant, incompetent, immaterial and for the further reason that the records are themselves the best evidence of what they contain.

Q. Will you examine the records and see, and show me the entry, if there is any, by which Mr. Stuart was first elected an officer of the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial. It is admitted that Mr. Stuart has been connected with the General Paper Company since about the time of its organization.

Q. Please refer me to the record where he was first elected an officer of this company other than a director.

Mr. FLANDERS: You may examine the records Mr. Alexander. Of course the record is for your inspection, and not for Mr. Kellogg's. If you need the record to refresh your recollection you may use it.

WITNESS (after referring to record): Mr. Stuart was elected second vice president December 8, 1903.

Q. May I see the record?

Mr. FLANDERS: Now just wait a minute.

Witness hands record to Mr. Flanders.

Mr. FLANDERS: We decline to submit the record to the counsel on the present state of the record.

Mr. KELLOGG: Well, let me ask some questions then,
229 please.

Q. Mr. Alexander, will you please turn to the page of the record of the minutes of the meeting of the board of directors of the General Paper Company at which Mr. Stuart was elected second vice president of the General Paper Company. Will you do so?

Mr. FLANDERS: I do not object to that, Mr. Alexander. If he wants you to turn to the page, turn to it.

Q. What page of the record is that contained on?

(Book inspected by Mr. Flanders.)

Mr. FLANDERS: Well, it is on page 70.

Mr. SEVERANCE: Let the witness testify.

Q. Is that your answer, that it is on page 70?

Mr. FLANDERS: You may adopt that answer.

A. It is on page 70.

Mr. KELLOGG: Now I offer in evidence page 70 of that record book and ask the witness to read it to the examiner.

Mr. FLANDERS: Well, we decline to give you the record book or any portion of it except this portion that relates to the election of Mr. Stuart as second vice president, and we do that stating that we are not obliged to do that but simply as a matter of courtesy to you.

Q. Will you read it, Mr. Alexander?

Mr. FLANDERS: Well, if you want it read, I will read it to you.

Mr. KELLOGG: No, I want the witness to read it.

Mr. FLANDERS: Then we decline to do it.

Q. Do you decline to do it, Mr. Alexander?

A. I do.

229½ Q. You do decline.

A. I do.

Mr. FLANDERS: Under the advice of counsel, you accept my direction, do you?

WITNESS: I do.

Q. What pages contain the entire record of that meeting?

Mr. FLANDERS: Well, wait a minute.

Q. Do you refuse to answer?

Mr. FLANDERS: If you know you can answer.

Q. Please look at the record and see.

A. Without recourse to the record I couldn't tell you.

Q. Please examine the record, Mr. Alexander.

No response.

Q. Do you decline to do it?

Mr. FLANDERS: Well, you can put the responsibility upon me. These records are in my charge as the attorney of the General Paper Company. Such information as you are entitled to have we propose to give you.

Mr. KELLOGG: Read the last question to the witness.

(Last two questions read to the witness.)

A. I do.

Q. You are the secretary of this company at the present time, are you not?

A. I am.

Q. And the records are in your charge, are they not?

A. They are.

Q. Do you refuse to produce the record of the meeting of the board of directors showing Mr. Alexander's election as vice president of the General Paper Company—or Mr. Stuart's as vice president of the General Paper Company?

Mr. FLANDERS: Under the direction of counsel for the
230 General Paper Company the witness states that the record books—

Mr. KELLOGG: Now wait, the witness does not state that.

Mr. FLANDERS: Now the witness does state it. We will have this taken down or we will stop right here, whichever you have a mind to. Whatever I say is to go in the record.

Mr. KELLOGG: All right, say it.

Mr. FLANDERS (continuing his statement):—and papers of the General Paper Company are in the general charge of James G. Flanders, counsel for the General Paper Company, who now has that record book in his possession, and under the advice of counsel he declines to open that book generally to the inspection of counsel upon the other side, either at this meeting or at any other, in the present state of the record, and offers now to read this portion of this meeting relating to the election of Mr. Stuart as second vice president of the General Paper Company, or to submit that portion of that meeting to the inspection of counsel. Is that your answer? Do you adopt that answer?

WITNESS: I do.

Mr. KELLOGG: Well, I wish to enter an objection to the counsel testifying.

Q. Well, Mr. Alexander, will you please read that part of the record showing the election of Mr. Stuart.

Mr. Flanders hands record book to the witness.

A. (Reading:): "Upon motion W. L. Edmunds, seconded by E. A. Edmunds, the secretary was authorized to cast the ballot for W. Z. Stuart for second vice president."

Q. Now please retain that record a moment. I am not through

231 with you, Mr. Alexander. Now, Mr. Alexander, have you before you in your hands the record book showing all of the minutes of the meeting, of that meeting of the directors, at which he was elected, the number of directors present, and the date of the meeting.

A. I have.

Q. Will you please read the record showing the number of directors present, the date of the meeting.

Mr. FLANDERS: Read it to him, the number of directors present and the date of the meeting, if it shows. The date is right here (pointing on book).

A. (Reading:) "All of the directors of the General Paper Company were present except B. F. Nelson and F. M. Aiken."

Mr. FLANDERS: Give him the date.

WITNESS: Tuesday, December 8, 1903.

Q. Who were the directors at that time? Does the minute book of the stockholders which you hold in your hand show who were the directors at that time?

A. Yes sir.

Q. Will you please turn to them?

Mr. FLANDERS: If you have got the list of the directors before you, read it, Mr. Alexander.

Q. Wait a moment. What meeting were those directors elected at, or at what meeting were those directors elected?

A. At the annual meeting of stockholders, Tuesday, December 8, 1903.

Q. What pages of the record book are those meetings contained on?

Mr. FLANDERS: Well, now, one moment. You have got one question before you. You are asked to read those directors.

231½ Mr. KELLOGG: No, I ask him what pages of the book of the records of the stockholders which you hold in your hand are the minutes contained on showing the election of that board of directors.

Mr. FLANDERS: Well, do you withdraw your request for the statement of the names of the directors?

Mr. KELLOGG: Now I prefer Mr. Alexander to answer that question.

Mr. FLANDERS: Well, you need not answer it until the counsel says he either withdraws or don't. We will have one question at a time or else know where we are standing.

Q. Do you refuse to answer, Mr. Alexander?

A. I do.

Q. On what ground?

Mr. FLANDERS: Under the advice of your counsel.

A. Under the advice of counsel.

(Last question read.)

Mr. FLANDERS: Now, take down what I say: If the counsel will either withdraw his previous question or say that he does not insist on it, the pages of the meeting in question will be given to him. But we insist that in the orderly process of this case we are entitled to have one question disposed of before another is put.

Mr. KELLOGG: I withdraw the previous question.

Mr. FLANDERS: Very well, the pages on which the directors——

Mr. KELLOGG: Now one moment. Let the witness take that and answer the question.

Mr. FLANDERS: Now this book is in my possession and you will take it as I give it to you or not at all.

232 Mr. KELLOGG: That book is in the possession of the secretary and he has produced it here before the examiner.

Mr. FLANDERS: We won't argue the question, because the book is in my possession and I propose to stand by it.

Mr. KELLOGG: Mr. Flanders, do you refuse to allow the witness to read in evidence the original record showing the election of that board of directors?

Mr. FLANDERS: I offer to give you the numbers of the pages or to submit it to you, so that you can see the numbers of the pages. I decline, in the present state of the record, to submit the record of that meeting to your inspection. I offer you now the names of the directors who composed the board of directors at the time Mr. W. Z. Stewart was elected second vice-president.

Mr. KELLOGG: I want the evidence of it from the original record book, read in evidence, and I ask the witness to read the minutes of that meeting showing the election of those directors.

Mr. FLANDERS: I propose to submit to you the names of those directors, if you want a copy of them; but I do not intend, and you might as well understand it now,—I do not intend unless I am ordered by higher authority than there is here now to unlock these books for your inspection on a fishing examination. Now you have got it on the record.

233 Mr. KELLOGG: Mr. Examiner, I wish you would direct the witness to take the possession of that book. Will you do so, for the purposes of this examination?

Mr. FLANDERS: Before you undertake to give a direction of that kind, you might inform yourself where you get authority for any such direction.

Mr. KELLOGG: He may request it.

Mr. FLANDERS: You didn't say anything about *requesting* it. Perhaps the examiner should find out where he gets authority to make any request in this case.

Mr. KELLOGG: Well, I should like to have the examiner make the request.

Mr. FLANDERS: I want to say here, Mr. Examiner, that as I under-

stand it, you are here to take what occurs, the testimony that is given, what is said by counsel, and report it to the court, and I dispute your right or authority to make any direction or request in this matter.

(The rules of court were sent for.)

Mr. KELLOGG: Without waiving my request I will go on with the examination.

Q. I notice by referring to page 17 of the stock subscriptions, that E. T. Harmon, of Grand Rapids, subscribed for five shares. At that time, on May 26, 1900, was Mr. Harmon connected with
234 any of the defendant paper companies in any capacity?

A. I think he was.

Q. What company?

A. The Grand Rapids Pulp & Paper Company.

Q. What officer was he at that time?

A. Sales manager, I think, or business manager, as far as my recollection goes.

Q. According to your recollection he was business manager?

A. Or general manager; I don't know the title.

Q. Has he been ever since connected with that company?

A. I think he has.

Q. Is he a stockholder of that company, do you know?

A. I do not.

Q. Is he still a director of this company, the General Paper Company?

A. He is.

Q. Mr. John Daly, of Grand Rapids, subscribed for twenty shares. Was he at that time and has he since been connected with any of the defendant companies?

A. At that time he was president of that company.

Q. What company?

A. The Grand Rapids Pulp & Paper Company.

Q. Is he still the president?

A. No sir.

Q. Is he still connected with it?

A. No sir.

Q. When did he cease to be connected with it?

A. At his death. He is dead.

Q. When did he die?

A. I couldn't give the date.

235 Q. You don't remember?

A. No sir.

Q. Mr. Alexander, I notice that you subscribed at that first meeting for fifty shares. Were you at that time connected with any company?

A. I was.

Q. What company?

A. The John Edwards Manufacturing Company.

Q. In what capacity ?

A. I was president of that company.

Q. Also a stockholder ?

A. Yes sir.

Q. What was the business of that company ?

A. Manufacturing paper.

Q. What kind of paper ?

A. Printing paper.

Q. News print paper, so-called ?

A. Yes sir.

Q. Still connected with it, are you ?

A. Yes sir.

Q. As president ?

A. Yes sir.

Q. I notice at some other date (not stated) you also subscribed for thirty shares of stock in the General Paper Company.

A. Yes sir.

Q. You signed the first subscription "Residence, Port Edwards, Wisconsin."

A. Yes sir.

Q. The second one, "Residence, Milwaukee, Wisconsin."

A. It is so signed. I didn't sign the second subscription.

Q. Oh, you didn't sign the second subscription ?

A. No sir.

Q. Where is your residence ?

A. Milwaukee.

Q. Was your residence there at the time you signed the
236 first one in Milwaukee ?

A. All my papers were sent from Port Edwards at the time. It was not my residence at the time that I signed that subscription, but my family were living here at that time.

Q. When did you make this subscription for thirty shares ?

A. 26th of May, 1900.

Q. On the same date that you made the other subscription ?

A. Oh, I beg your pardon. That wasn't made by me.

Q. Who made it ?

A. It was made by Mr. Garrison.

Q. What date was it made ?

A. I couldn't give you the exact date.

Q. When did you take the stock ?

A. I don't remember the date I took the stock.

Q. Did you take your first stock, fifty shares, immediately after the subscription, 26th of May ?

A. No sir.

Q. When did you take it ?

A. When the stock was issued as a whole.

Q. When was it issued ?

A. I can't recall the date.

Q. Have you the records, the stock books, showing the issue of that stock?

A. They are in the possession of Mr. Flanders.

Q. Where?

A. Here.

Q. In court?

A. In court.

Q. Will you please produce it?

Mr. FLANDERS: Mr. Alexander will produce nothing that I have got. If you want me to produce some things be good enough
237 to request it.

Q. You are the custodian of the book, the records, showing the issue and transfer of all stock, are you not?

Mr. FLANDERS: Well, now, Mr. Alexander, you need not answer that question. That is a question of law. You are not to be examined on a question of law.

Q. Mr. Alexander, do you refuse to answer that question?

A. Under the advice of counsel, I do.

Q. Did you not bring that record into this room?

A. I did.

Q. Yes sir.

A. At Mr. Flanders' request.

Q. Well, you brought it, didn't you? You brought it under subpoena, didn't you?

A. No sir, I turned them over to Mr. Flanders.

Q. You brought it into this room, did you?

A. I did.

Q. Where is it now?

Mr. FLANDERS: Well, I have possession of it.

Q. It is here in the room, is it?

A. It is.

Q. You refuse to produce it?

A. Under the advice of counsel, I do.

Q. Did you bring it from Chicago?

A. No sir.

Q. Where did you bring it from?

A. I brought it from Mr. Flanders' office.

238 Q. Where is the office of the General Paper Company in this town?

A. In the Wells building.

Q. Is that your office?

A. Yes sir.

Q. Do you keep there the records of the meetings of the board of directors and stockholders of this company?

A. Usually I do.

Q. Do you keep there the records of the stock transfers and stock issues of this company?

A. Usually I do.

Q. When did you take them away from that office?

A. I do not remember the date of that.

Q. Well, what date?

A. I can't recall the date; sometime during the month of February.

Q. Of this year?

A. Yes sir. No, January.

Q. January of this year?

A. Yes sir.

Q. Have they been in your possession since?

A. Only to look at.

Q. Except when you brought them into court this morning.

A. Yes sir.

Mr. FLANDERS: Now have you got through with Mr. Alexander on that subject.

Mr. KELLOGG: No, I have not.

Mr. FLANDERS: When you have please let me know.

Q. Were you subpoenaed to produce the stock books and stock ledgers of the General Paper Company, at ten o'clock this morning before the examiner.

A. Yes sir.

Q. Is that the subpoena served on you. (Handing the witness paper.)

A. I think that is a copy of it. It appears to be.

239 Same marked Petitioner's Exhibit 26.

Mr. KELLOGG: We wish to file that with the examiner as a part of this record.

Q. Now when you came to the stand this morning as a witness, you had that book with you, did you not?

A. No sir.

Q. Didn't you bring it into court?

A. Yes sir.

Q. What did you do with it?

A. I left it down on the seat.

Q. You returned afterwards and got it, did you not?

A. Yes sir.

Q. And brought it with you to the stand where you now sit?

A. Yes sir.

Q. Does that book contain the record of the issue of all stock of this company and to whom issued?

A. Yes sir.

Q. Did it contain the date of the issue of such stock?

A. Yes sir.

Q. Does it show the present list of stockholders of the General Paper Company?

A. Yes sir.

Q. And all prior stockholders?

A. Yes sir.

Q. And the transfers of all stock?

A. Yes sir.

Q. Does it show the date of the issue of this fifty shares first subscribed by you, to you?

A. It shows the issue of all stock.

Q. It shows the issue of that stock to you, and the issue of the thirty shares to you?

A. Yes sir.

Q. Will you please produce that book, or will you please read in evidence from that book the date of issue—the record showing the issue of all shares of stock of the General Paper Company?

240 Mr. FLANDERS: Mr. Alexander, have you got those books in your possession?

WITNESS: Not at present, no sir.

Q. Are they lying here on the table, Mr. Alexander?

A. Yes sir.

Q. They are.

A. Yes sir.

Q. Well, will you please take the book and read the record in evidence?

Mr. FLANDERS: You won't open any of these books without my permission.

Mr. KELLOGG: Well, I will ask one or two more questions.

Q. Are those books kept by you as the secretary?

A. Yes.

Q. Are they original records of the issue of stock.

A. Yes sir.

Q. And the original record of transfer of stock.

A. Yes sir.

Q. Now, Mr. Alexander, will you please read in evidence from the stock book the original list of stockholders, the amount issued to each stockholder, the date of the issuance of the certificate, from these original books?

Mr. FLANDERS: Mr. Alexander will read nothing from any books in my possession without my permission. And you adopt that position, do you, Mr. Alexander?

WITNESS: I do.

Q. You refuse to do it?

Mr. FLANDERS: Now wait a minute. You will allow me to make my statement, I hope. Now then I tender you here the inspection of the stock certificate book and the stock register.

241 Mr. KELLOGG: Very well, that is what I want to see.

Mr. FLANDERS: If you had asked for it you would have got it before, but you are not going to get any books or papers that way until we are told by higher authority that you can do it.

Stock certificate book and stock register handed to Mr. Kellogg by Mr. Flanders.

Stock certificate book marked Petitioner's Exhibit 27, and stock register Petitioner's Exhibit 28.

Q. I show you Exhibit 28. Please state what that is.

A. Stock certificate register.

Q. Of what company?

A. Of the General Paper Company.

Q. Does it contain a record of all of the stockholders, the date of the issue of the stock, the number of certificates, the number of shares and the amount or par value, and the date of the transfer, and to whom issued and to whom transferred?

A. It does.

Q. Who keeps this record?

A. I do.

Q. Is it in your handwriting?

A. Yes sir.

Q. Were these entries made at the time of the transfer?

A. Yes sir.

Q. All of them?

A. I think so.

Q. Please look and see. (Handing book to witness.) Were these entries made at the time of the issue of the stock and the entries of transfer at the time of the transfers?

A. They were.

Mr. KELLOGG: I offer this book in evidence.

Mr. FLANDERS: Well, now, Mr. Kellogg, of course there is no objection to your offering the book in evidence, but I think it ought to be understood that copies of the entries are to be substituted for the original book.

Mr. KELLOGG: I have no objection to copies of the entries being substituted for the books, if it be understood that the original books will be produced for inspection at any time desired in court.

Mr. FLANDERS: Of course that will be done; that is, to anything unless we make a reservation. At any rate, certainly as regards these two books that will hold.

Mr. KELLOGG: I am speaking of these two books now.

Mr. FLANDERS: We will have them there at any time you want them before the court.

Q. I show you a book marked Exhibit 27. Please state what that is.

A. Stock certificate book of the General Paper Company.

Q. Does it contain the stubs of all certificates of stock issued,

showing the number of the certificate, the name of the party to whom the stock is issued, the date of issue and the amount of stock ?

A. It does.

Q. And a receipt by the party to whom it was issued ?

A. Yes.

Q. And does it contain all of the certificates of stock which have been returned and cancelled for transfer ?

A. Yes sir, I think so.

Q. And the date of such transfer ?

A. Yes sir.

Mr. KELLOGG : I offer this book in evidence with the same understanding, if satisfactory to counsel, that copies may be substituted for these originals, the original to be produced for inspection at any time in court, desired by either counsel.

243 Mr. FLANDERS : That is entirely satisfactory, Mr. Kellogg, with this—I would like to have this understanding: Of course when we come to the trial you will naturally let us know what originals you want us to bring.

Mr. KELLOGG : Oh certainly.

Mr. FLANDERS : Then I would make another suggestion, and that is, unless you prefer to have those stock certificates all copied, there is one form of all, we should like to make a summary, it seems to me, of the contents of that stock certificate book which we could agree upon as representing the contents of that stock certificate book. But if you prefer the copies, why—

Mr. KELLOGG : Well, I don't know but that summary would answer every purpose. I think he could make up a summary.

Mr. FLANDERS : If you made one form of the stock certificate that would certainly do.

Mr. KELLOGG : Mr. Alexander may do that.

Mr. FLANDERS : Probably that would be easier done by Mr. Taylor.

Mr. KELLOGG : Mr. Taylor can make copies and submit to counsel.

Q. Now Mr. Alexander, will you turn to these books, for the purposes of this examination, and give me the date on which the fifty shares of stock was first issued to you ?

A. All the stock that I subscribed for was issued to me in one certificate.

Q. What date ?

244 A. Under date of December 31, 1901.

Q. Had you any temporary certificates in the mean time ?

A. No sir.

Mr. FLANDERS : Speak a little louder, Mr. Alexander.

Mr. ALEXANDER : No sir, I have got a bad cold ; I can hardly speak this morning.

Q. Will you explain how this stock was subscribed in your name or by you at two different times and in different amounts ?

A. The first subscription was for the purposes of organization, as I understand it, and the second subscription was taken during my absence, and my business associate signed for me.

Q. When did they do that?

A. I couldn't give you the date.

Q. Who made the subscription for you?

A. Mr. Garrison.

Q. Is he an associate with you in any mill in which you are interested?

A. He is.

Q. What mill?

A. The John Edwards Manufacturing Company.

Q. What mills are you interested in?

A. The Nekocoma Paper Company, the John Edwards Manufacturing Company and the Centralia Pulp and Waterpower Company.

Q. Now, the fifty shares that you subscribed for was subscribed by you as representing which mill?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and assuming a fact not proven in the case. And it is also objected to further as leading.

Mr. KELLOGG: Well, under the circumstances I think we have a right to lead the witness. Will you please answer the question?

The question was read.

245 A. I didn't subscribe it to represent any mill.

Q. You did not?

A. No sir.

Q. It was not based on the output of any mill?

By Mr. FLANDERS: That is objected to for the same reasons.

A. No sir.

Q. Now Mr. Alexander, was Mr. Garrison interested in all the mills that you are interested in?

A. Yes sir.

Q. As a stockholder.

A. Yes sir.

Q. In all three of these mills.

A. Yes sir.

Q. Was he at the time?

A. Yes sir.

Q. And you were interested in all three as stockholder?

A. Yes sir.

Q. Who else? Who were the other stockholders?

A. The different stockholders?

Q. Yes, of these three mills.

A. I couldn't give you the list of all the stockholders here,

Q. You could not?

A. No sir.

Q. Have you got a record showing it?

A. No sir, not here.

Q. Have you got a stock book showing it?

A. No sir, not here.

Q. Well the companies have?

A. Yes sir.

Q. Who are the secretaries of the companies?

A. Mr. Garrison is the secretary of the John Edwards Manufacturing Company and I am the secretary of the Nekoosa Paper Company and the Centralia Pulp and Waterpower Company.

246 Q. You have a record of your stockholders, have you not?

A. At the mills, yes sir.

Q. At the mills.

A. Yes sir.

Q. They show the list of stockholders?

A. They do.

Q. And all transfers of stock?

A. Yes sir.

Q. Will you please produce the list of the stockholders of those companies?

A. I will if I can.

Q. Well, you can produce them, can't you?

A. I think I can get the list of stockholders, yes sir.

Q. You will get them, will you?

A. I will try to, yes sir.

Mr. FLANDERS: They may be produced here, and we will decide afterwards whether they will be produced for inspection or not.

Q. Now, tell me how Mr. Garrison claimed to subscribe for your thirty shares of stock.

Objected to as irrelevant, incompetent and immaterial.

Mr. FLANDERS: Where there is simply an objection, Mr. Alexander, after the objection is made it is expected you will answer unless you receive some further direction about it.

A. I guess I gave him authority to attend to that matter for me, if he wanted to subscribe any more stock in my name.

Q. Now when did you give him that authority?

Mr. FLANDERS: Same objection.

A. I don't recall.

Q. Have no recollection at all?

A. No sir.

247 Q. Was it on the 26th of May?

A. It might have been.

Q. You have no knowledge of that whatever?

A. Yes sir, I have knowledge of the fact but not of the exact date.

Q. Why didn't you subscribe for the full amount on that date?

Mr. FLANDERS: Same objection.

A. For the reason that we only subscribed for organization purposes on that date.

Q. Whom do you mean by "we"?

A. The stockholders represented on page 17, excepting the last three subscribers.

Q. When did you pay for the fifty shares of stock that you first subscribed for?

Objected to as irrelevant, incompetent and immaterial.

A. It was paid for on the—about the time that the stock was issued; I can't give the date exactly.

Q. About 1901.

A. Yes sir, fully paid.

Q. Was any sum paid on it before that?

A. Yes sir.

Q. How much?

Mr. FLANDERS: Taken under the same objection.

A. Thirty per cent. of seventy-five per cent. of the stock.

Q. What is that?

A. Thirty per cent. of seventy-five per cent. of stock subscribed was paid for about the time that we commenced to do business.

Q. That is, you mean you paid for thirty per cent. of seventy-five per cent. of fifty shares.

A. Yes sir.

Q. What?

A. Yes sir.

Q. What did you get for your payments? a certificate of any kind?

248 A. No sir.

Q. A receipt?

A. Yes sir, acknowledgment.

Q. Who from?

A. From myself, as secretary and treasurer.

Q. Where is that receipt?

A. I do not know.

Q. Will you please produce it?

A. If I can find it.

Q. Why was that amount called for, thirty per cent. of seventy-five per cent. of the par of your fifty shares?

A. To enable the company to commence doing business.

Q. Why was that particular percentage arrived at in that way?

A. Well that was the amount decided upon.

Q. Why did you call a part on the seventy-five per cent.?

Mr. FLANDERS: It is under the statute, Mr. Kellogg. The law requires fifty per cent. to be subscribed for and twenty per cent. to be paid in.

Q. Did you pay that by check or in cash?

A. That was paid by check.

Q. Drawn by you?

A. No sir.

Q. What company?

A. Of the John Edwards Manufacturing Company.

Q. On its general account. Now Mr. Alexander, when did you pay the balance?

A. About the time that all the stocks were issued.

Q. The balance of the whole eighty shares was paid for.

A. Yes sir.

Q. By check?

A. I think so.

Q. What company?

A. I couldn't tell. I think the John Edwards Manufacturing Company check was drawn for it.

Q. Did the Centralia Pulp and and Waterpower Company or the Nekoosa Paper Company pay any part of that?

A. For the stock that was issued to me?

249 Q. Yes sir.

A. No sir.

Q. Did they draw a check for any part of it?

A. No sir.

Q. Was any part of it charged to them——

A. No sir.

Q. On the books?

A. No sir.

Q. Never?

A. No sir.

Q. It was all paid by the check of the John Edwards Manufacturing Company?

A. Yes sir.

Q. Mr. Garrison subscribed for some stock also, did he not?

A. Yes sir.

Q. What amount?

A. Forty-five shares.

Q. Page 17 shows twenty-five shares?

A. Yes sir.

Q. Where is the other subscription?

Witness points to entry on book.

Q. On page 16 twenty shares?

A. Yes sir.

Q. How was that paid for?

Objected to as irrelevant, incompetent and immaterial.

A. That was paid for by check.

Q. What company?

A. The Centralia Pulp and Waterpower Company, I think.

Q. Both of them?

A. Yes sir.

Q. Did Mr. Nash subscribe for any sum?

A. Yes sir.

Q. What is his full name?

A. T. E. Nash.

Q. Did he subscribe on this first subscription list?

A. Yes sir.

Q. How much?

A. One hundred shares.

Q. Did he subscribe on any other subscription list?

A. Yes sir.

Q. How much?

A. Thirty shares.

250 Q. What company paid for that?

Mr. FLANDERS: If you know.

A. I don't know what company paid for it?

Q. Well, what company is he an officer of?

A. He is president of the Nekoosa Paper Company.

Q. Didn't you get a check in payment of it?

A. I think I did, yes sir.

Q. What check was it?

A. I think it was the Nekoosa Paper Company.

Q. Now two of those companies you are secretary of.

A. Yes sir.

Q. Which ones?

A. The Nekoosa Paper Company and the Centralia Pulp and Waterpower Company.

Q. Have you got those checks?

A. No sir.

Q. Where are they?

A. I can't tell you, unless they are at the offices of the company.

Q. They are usually kept at the offices of the company, are they not?

A. I think so.

Q. The books of the company will show a record of this payment, will they not?

A. I think so.

Q. Now, Mr. J. A. Kimberly, of Neenah, Wisconsin, he subscribed for one hundred shares on this first subscription list. How was his paid?

A. I don't recollect how it was paid.

Q. Do your books show it?

A. I think they will.

Q. Are the books here?

A. No sir.

Q. Where are they?

A. They are in Chicago.

Q. They are in Chicago?

A. Yes sir.

251 Q. As treasurer of the company don't you keep those books?

A. Well, yes, they are under my supervision.

Q. Yes, they are kept under your supervision.

A. Yes.

Q. They show the payment of all this stock and how it was paid?

A. Yes, sir.

Q. Do you remember how Mr. Kimberly's was paid?

A. I don't recall.

Q. Do you remember how Mr. J. C. Kimberly's was paid?

A. No sir, I don't recollect.

Q. Do you remember how Mr. W. Z. Stuart's was paid?

A. No sir, I don't recollect that.

Q. Mr. E. T. Harmon?

A. No sir.

Q. Mr. John Daly's?

A. No sir.

Q. But your books will show how they were paid?

A. Yes sir.

Q. Now, isn't it your recollection that all of these were paid that I have named by the checks of the companies with which these gentlemen were connected?

A. I think they were.

Q. You think they were all paid that way?

A. Yes sir.

Q. Now who was Mr. A. M. Pride? What company was he connected with at the time he made this subscription?

A. With the Tomahawk Pulp and Paper Company.

Q. Was he an officer of that company?

A. I think so.

Q. President?

A. No sir, I think not.

Q. You don't think he was president?

A. I think not.

Q. Is he still connected with that company?

A. I think so.

Q. As an officer?

A. Yes, sir.

252 Q. Is he a stockholder of that company?

A. Yes sir.

Q. And has been a stockholder of that company ever since the 26th of May, 1900?

A. As far as I know.

Q. Is he prominent in the management of the affairs of that company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Why, I think so.

Q. Now, isn't it your recollection that his subscription was paid by the check of his company?

A. The same as the others?

Q. Yes.

A. That is the same question I answered fully.

Q. You think all of them were paid that way.

A. I think so.

Q. Now did Mr. Pride make any further subscription later?

Witness points to entry on book.

Q. Fifteen shares at a later time.

A. Yes sir.

Q. Mr. C. A. Babcock, of Neenah, Wisconsin, subscribed for five shares at the first meeting, and twenty-five shares later, I notice.

A. Yes sir.

Q. What company is he connected with?

A. The Wisconsin River Paper and Pulp Company.

Q. Has he been ever since the 26th of May, 1900?

A. As far as I know.

Q. What officer?

A. I think he is the secretary of that company.

Q. Do you think he is also a stockholder?

A. I think he is.

Q. Is he the principal managing officer of the company?

A. I don't know.

253 Q. Mr. George A. Whiting, of Neenah, Wisconsin, subscribed for fifty shares on the first list and—I guess he didn't subscribe afterwards, did he?

A. I don't see it.

Q. At the time of the organization of the General Paper Company, and ever since said time, has he been connected with any mill defendant in this case?

A. I think so.

Q. What mill?

A. The Wisconsin River Paper and Pulp Company.

Q. What officer is he of that company?

A. I think he is president?

Q. Has been all the time?

A. I think so.

Q. Do you know whether he is a stockholder also in it?

A. I think so.

Q. Mr. C. W. Howard, of Neenah, Wisconsin, subscribed for ten shares at the first meeting and forty shares afterwards. Is he an officer, or has he been, during this time of any of these companies?

A. I think so.

Q. What company?

A. The C. W. Howard Company.

Q. Is he still connected with it?

A. I think so.

Q. What officer?

A. I think he is the president of the company.

Q. Is he also a stockholder, do you know?

A. I think so.

Mr. FLANDERS: I have a physician's certificate of Mr. Howard's inability to be here. I call attention to it now. I can hand it to you now.

Mr. KELLOGG: Oh, that is not necessary. We can take his testimony at his convenience.

254 Q. Mr. F. C. Shattuck, of Neenah, Wisconsin, subscribed for five shares on the 26th of May; (page 17) I don't know whether he subscribed for any other afterwards or not.

A. No.

Q. Five shares. What company is he connected with and was at that time?

A. The Kimberly and Clark Company.

Q. The same company Mr. J. A. Kimberly is connected with.

A. Yes sir.

Q. Mr. E. A. Edwards, of Oconto Falls, subscribed for five shares; what company was he at that time connected with and what company is he now connected with?

A. The Falls Manufacturing Company.

Q. What officer was he of that company?

A. I think he was secretary. I am not sure.

Q. Is he still secretary?

A. I couldn't tell you.

Q. Do you know whether he is a stockholder of that company?

A. I think he is; I couldn't tell you.

Q. How much stock was issued to Mr. E. A. Edwards, in the first instance?

A. Thirty-six shares.

Q. Well, now at that time that thirty-six shares was issued to him, what company was he connected with?

A. The Falls Manufacturing Company.

Q. Do you know when the Rhinelander Paper Company was organized?

A. No, I do not.

Q. Well, you know it was not organized. Articles seem to have been executed on the 25th of April, 1903. Do you have any recollection of that at all?

A. Not as to the exact date. No sir.

255 Q. Well, they were not organized at the time you organized the General Paper Company, were they?

A. I don't think so, no sir.

Q. They didn't originally go into the combination and make that company a selling agent, did they, with these other companies?

A. No sir.

Q. Now, Mr. Edwards went with the company, didn't he?

A. Yes sir.

Q. When?

Mr. FLANDERS: Edmunds.

Mr. KELLOGG: Edmunds, I mean. I didn't mean Edwards. I mean Edmunds.

Q. He went with the Rhinelander Paper Company, didn't he?

A. Yes sir.

Q. What officer is he of that company?

A. I think he is their manager, business manager.

Q. Business manager. He then transferred some of his stock didn't he?

A. No sir. Well, I——

Q. When did he transfer some of his stock?

A. December 13, 1904.

Q. Well, that was after he went with the Rhinelander Paper Company, wasn't it?

A. Yes sir, I think so.

Q. Now, who was the man to whom he transferred that stock?

A. To J. H. Delbridge.

Q. Who is he?

A. He is the business manager of the Falls Manufacturing Company.

Q. One share, was it?

A. Yes sir.

256 Q. He transferred another share.

A. Yes sir.

Q. To whom?

A. To George W. Meade.

Q. Who is he?

A. He is secretary of the Consolidated Waterpower and Paper Company.

Q. When was the Consolidated Waterpower and Paper Company organized.

A. I couldn't tell you.

Q. Do you have any recollection about it at all?

A. I have some recollection about it but not as to the exact date.

Q. Well, was the Consolidated Waterpower and Paper Company one of the original companies that went into this General Paper Company and made it its agent?

A. No sir.

Q. When did it go in?

A. In 1904, sometime during the year.

Q. In 1904. At that time there was one share of stock transferred to Mr. Meade, was there?

A. No sir.

Q. About that time?

A. A long time after that.

Q. Well, it was in 1904; one share of stock was transferred to him.

A. Yes sir.

Q. Who is he? the general manager?

A. He is the secretary of the Consolidated Waterpower and Paper Company.

Q. Well, it was during that year that that company went into this combination and made the General Paper Company its agent, wasn't it?

Mr. FLANDERS: I object to that question as assuming a fact not proven in the case and also as leading.

Q. It was during that year that it made that company its agent, was it not?

A. Yes sir.

257 Q. Is any other stockholder of the Consolidated Waterpower and Paper Company or any other person connected with the Consolidated Waterpower and Paper Company, a stockholder in the General Paper Company?

A. I don't know.

Q. Who is Mr. D. E. Reese?

A. He is the business manager, or—I don't know what his title is, but he is associated with the Combined Locks Paper Company.

Q. Has he been ever since the organization of the General Paper Company?

A. I think so.

Q. Do you know what officer he is?

A. No sir.

Q. Whether he is a stockholder?

A. No sir, I don't know.

Q. You don't know?

A. I don't know.

Q. He is still connected with that company.

A. I think so.

Q. Mr. D. R. Davis, of Eau Claire, Wisconsin; who is he?

A. He was the president of the Dells Paper and Pulp Company.

Q. He is dead now?

A. He is.

Q. Do you remember when he died?

A. 1903, I think—'2 or '3; I have forgotten the exact date.

Q. 1903, you say.

A. I think so.

Q. Who took his place as manager of that company?

A. I think W. L. Davis.

Q. And Mr. D. R. Davis' stock was transferred to W. L. Davis at that time, was it not?

A. Yes sir.

Q. Mr. W. L. Davis is now manager of the Dells Paper and Pulp Company.

A. I think so.

258 Q. Who is Mr. N. H. Brokaw?

A. He is dead; he was of the Falls Manufacturing Company.

Q. What officer, do you know?

A. I don't know.

Q. Do you remember when Mr. Brokaw died?

A. In 1904, I think.

Q. Well, the stock he subscribed for was never issued to him, was it?

A. I don't think so.

Q. To whom was it issued?

A. I can't tell who it was assigned to. I think to E. A. Edmunds.

Q. Does the book show (handing book to witness)?

A. To E. A. Edmunds.

Q. Well, Mr. Brokaw's stock was subscribed for by whom?

A. By W. L. Edmunds.

Q. Who is Mr. W. L. Edmunds?

A. He is an officer of the Wausau Paper Mills Company.

Q. And was Mr. Brokaw also?

A. I think he was.

Q. Did Mr. Brokaw make more than one subscription?

A. I think not.

Q. And what is the name of that company? I didn't catch that.

A. The Wausau Paper Mills Company.

Q. Mr. W. L. Edmunds was an officer of that company?

A. I think so.

Q. He is the man that signed Mr. Brokaw's name to this subscription?

A. Yes sir.

Q. And that stock was transferred by W. L. Edmunds to whom?

A. To E. A. Edmunds.

Q. And E. A. Edmunds is of the Oconto Falls mill?

A. Yes sir. The Falls Manufacturing Company.

259 Q. Was the stock issued to him, Mr. E. A. Edmunds?

A. I think so.

Q. Mr. B. F. Nelson of Minneapolis, he is connected with the Hennepin Paper Company, isn't he?

A. Yes sir.

Q. President of it?

A. I think so.

Q. Has been since its organization?

A. I couldn't say as to that.

Q. Well, he has been since the organization of the General Paper Company.

A. I think so.

Q. Mr. John S. Van Nortwick, of Appleton, who is he? What company is he connected with?

A. He is connected with the Combined Locks Paper Company.

Q. Has been since 1900?

A. I think so.

Q. Is he an officer of that company?

A. I think so.

Q. President?

A. I think he is vice president.

Q. Mr. H. M. French, of Chicago, Illinois, was the first manager, or sales agent, wasn't he, of the General Paper Company?

A. Yes sir.

Q. That one share was never issued to him?

A. No sir.

Q. That one share of stock was never issued to him?

A. No sir.

Q. Well, now at the time, and prior to the organization of the General Paper Company, these various gentlemen whom I have named were connected with the various companies in the same manner as they have been since, were they not?

A. I couldn't say as to that.

Q. Well, you know they were at the time of the organization of the General Paper Company, don't you?

260 A. Yes sir.

Q. And in most cases prior to that time for some time, were they not?

A. I think so.

Q. I don't mean those companies that have been organized since, of course, but those companies that were organized prior to the organization of the General Paper Company, those gentlemen are connected with them in substantially the same capacity as they were afterwards.

A. I think so.

A recess was here taken until two o'clock p. m.

Afternoon session.—The witness was recalled and examination resumed by Mr. Kellogg.

Q. Now, Mr. Alexander, looking at page 17 of this stock subscription, you say those down to—this book was marked for identification Petitioner's Exhibit 29—those subscriptions down to Mr. B. F. Nelson's name, you say were made on the 26th day of May, 1900.

A. I think they were.

Q. That was the day you met and had your first meeting of the General Paper Company in Milwaukee?

A. I think so.

Q. Now as a matter of fact, Mr. Alexander, up to that time that included representatives of all the mills that had joined the combination, didn't it?

MR. FLANDERS: That is objected to as assuming something not shown in the case.

Q. Answer the question, please.

Mr. FLANDERS: Well, if you know of any combination.

261 Q. Well, I am not speaking of an illegal combination; I am speaking of making the General Paper Company their agents.

A. I couldn't say.

Q. Don't you know what parties had agreed up to that time to make the General Paper Company their agents?

A. I can't recall at this time.

Q. You don't remember?

A. No sir.

Q. Now, you know they all hadn't, don't you?

A. I do, yes sir.

Q. And there were sixteen mills first joined the combination, were there not, or made the General Paper Company its agent.

A. I don't remember whether it was sixteen or some other number.

Q. Well, what other number? You know it wasn't twenty, don't you?

A. I think it was fourteen.

Q. You think it was fourteen mills.

A. I do.

Q. And on the 26th how many had agreed to join?

A. I don't know that any mills had agreed to join on the 26th.

Q. When did they agree to join? At what meeting? On the 18th of June?

A. I don't understand the question.

Q. Well, you held another meeting on June 4th, didn't you? The second meeting was held on June 4th wasn't it?

A. I can't recollect it.

Q. Well, will you look at your book and see.

Mr. FLANDERS: Well, now one moment. Are you now speaking of a meeting of the General Paper Company?

262 Mr. KELLOGG: Yes sir; a meeting of the General Paper Company, either directors or stockholders.

Mr. FLANDERS: There was no meeting on that date.

Mr. KELLOGG: Well, was there a meeting on the 4th of the principal parties interested in the General Paper Company, on the 4th of June?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I can't recollect the date.

Q. Well, was there about that date a meeting?

A. There might have been.

Q. Was there a meeting of the board of directors about that time?

A. There might have been.

Q. Well, do you know whether there was or not—near that time?

A. I couldn't say exactly.

Q. You have no recollection about it at all.

A. No sir, not from memory.

Q. Do you have any recollection of any meeting in the month of June during that year?

A. No sir.

Q. None whatever?

A. No sir.

Q. You attended no meeting?

A. I don't know.

Q. Well, will you refer to the record and see if there were any meetings during the month of June?

MR. FLANDERS: There was a directors' meeting on the 18th of June.

Q. Mr. Alexander, was there a directors' meeting on the 18th of June?

A. I think there was if the record says that.

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Q. Please look at the record and see.

MR. FLANDERS: Now the record is in my possession, Mr. Kellogg, and I am not going to give you this book to inspect or paw over until you are entitled to it. I am willing to give you an inspection of whatever you are entitled to, and not any more than that; and you can't get it by telling the witness to look at it.

MR. KELLOGG: Well, do you want us to call you as a witness?

MR. FLANDERS: I don't care what you do, as far as I am concerned.

MR. KELLOGG: Well, if you think this is going to help your case by sitting here and refusing to let this witness take the book that he is the legal custodian of, very well.

MR. FLANDERS: Well, Mr. Kellogg, I am trying my side of this lawsuit and you take care of yours, and I will be responsible for mine.

Q. Now, Mr. Alexander, I wish you to look at that book to see if there was a meeting of the board of directors of the General Paper Company on the 18th of June, 1900?

MR. FLANDERS: Well, I tell you there was.

Q. Well, was there, Mr. Alexander?

A. Under advice of the counsel, there was.

Q. Yes, that is a very good answer. Well, will you look at the minutes of the meeting.

A. Under the advice of counsel, I will not.

Q. You will not.

A. No sir.

264 Mr. FLANDERS: Well, the counsel for the General Paper Company has the possession of this book, hasn't it?

WITNESS: Yes sir.

Mr. KELLOGG: Have you any objection to the witness refreshing his recollection from this book?

Mr. FLANDERS: Do you doubt my statement to you that there was a meeting on the 18th of June?

Isn't that an admission in the case?

Q. What fourteen mills do you refer to that first joined this combination?

A. Do you wish me to enumerate them?

Q. Yes sir.

A. I don't understand that question.

Q. What did you mean when you spoke about fourteen mills first joining?

A. That entered into a contract with the General Paper Company?

Q. Yes, that is what I mean. When did they do that?

A. I think some time about the first of July, or I can't recall the dates exactly. The contracts will show.

Q. What year?

A. 1900.

Q. Name the mills.

A. The Kimberly and Clark Company, Atlas Paper Company, Combined Locks Paper Company, C. W. Howard Company, the John Edwards Manufacturing Company, the Nekoosa Paper Company, Centralia Pulp and Waterpower Company, Grand Rapids Pulp and Paper Company, the Wisconsin River Paper and Pulp Company, Wausau Paper Mills Company, Tomahawk Pulp
265 and Paper Company, Dells Paper and Pulp Company, Falls Manufacturing Company, Hennepin Paper Company.

Q. That was fourteen. Well, now, you say they entered into contracts about the first of July.

A. About that date, yes sir.

Q. Those contracts were all signed at the same time?

A. I think so, very nearly.

Q. At the same place?

A. I don't remember just now; I think so.

Q. You think at the same place. Where was that,—in Milwaukee?

A. I don't recall whether it was Milwaukee or Chicago.

Q. It was at a meeting held of this company, was it, of the General Paper Company?

A. I don't recall.

Q. Well, was it at a meeting composed of the gentlemen who were influential in organizing the General Paper Company?

A. It might have been.

Q. Well, was it at any meeting at all that those were signed?

A. I couldn't tell you.

Q. You were there, weren't you?

A. I don't recollect that, either.

Q. You signed yours at the same time, didn't you?

A. I don't remember that.

Q. You don't remember?

A. No sir.

Q. Then why do you say you think they were all signed at the same time if not at the same place?

A. I say I think they were signed at about the same time.

Q. Now as a matter of fact, didn't the subject come up at
266 a meeting in which they all signed the contracts on the same day?

A. I don't remember.

Q. Well, what did you mean by saying that you thought they were signed at the same time and the same place.

A. I don't recollect I said that; I said they were signed about the same time, and I don't remember whether it was at the same place or not.

Q. You don't remember anything about it at all.

A. I just testified that I remembered they were signed about the same time, but I didn't say whether they were the same place or the same time, all of them.

Q. Did the board of directors act on these contracts?

267 A. They did.

Q. And at a meeting?

A. Yes sir.

Q. Where was it held?

A. I couldn't say. In Milwaukee, if it was held at all.

Q. Does the record show a meeting on which they acted on these contracts?

A. I think it does.

Q. When was that, as nearly as you can recollect?

A. I think some time in July, possibly; I couldn't recall it.

Q. Will you please refresh your memory from the record?

MR. FLANDERS: If you can find any action taken on that subject you may do so. (Handing witness record book, and witness inspects the book.)

A. I can't find such, an acceptance of record in the directors' meetings.

Q. What is that, I don't understand you?

267 A. I can't find any record of the acceptance of the contract.

Q. Do you find any action by the directors at all on the contracts?

Mr. Flanders points to certain portions on the book.

MR. FLANDERS: Now, Mr. Alexander will read the only portion of the minutes bearing on that subject, if you want him to.

Mr. KELLOGG: I want them submitted to counsel, so I can see it.

Mr. FLANDERS: We will submit this portion to you.

Mr. KELLOGG: All right, let me see it. I want the examiner to make a memorandum of the manner in which the counsel are allowed to inspect the book. Sheets of paper are placed over part of the page by Mr. Flanders, and certain lines left open for the counsel to examine. Under the rules it is the duty of the examiner to make a memorandum or report of any matters that he desires to — the attention of the court.

Mr. FLANDERS: You make all the memorandum you want to to that effect. The witness has testified that the only entries in the minutes of the board of directors' meetings are those which are now submitted to the inspection of counsel.

Mr. Kellogg looks at the portion of the book which is disclosed.

Q. Well now, what page is this section in reference to these contracts contained on, Mr. Alexander?

Mr. FLANDERS: Do you really want to know or do you insist on his telling you?

208 Mr. KELLOGG: I want to know and I want it in the record and I want him to tell.

Mr. FLANDERS: If you want to know, it is on pages pages 28 and 29.

Mr. KELLOGG: Do you testify to that?

A. Yes sir.

Mr. FLANDERS: You testify to it from such information as I give you.

Mr. KELLOGG: It is the duty of this witness to testify from his own knowledge.

Q. Do you know what pages it is on?

A. No sir, not of my own knowledge.

Q. Will you look and tell us?

Witness looked at the book.

A. Pages 28 and 29.

Q. What is the date of that meeting? Please look at the book and see, Mr. Alexander.

Mr. FLANDERS: June 18th.

Witness looks at the book, which is in the possession of Mr. Flanders.

A. June 18th.

Q. What year?

A. 1900.

Q. Now do you say that is the only reference in any of the meetings of the board of directors of the General Paper Company that gave any authority to make contracts with mills, corporations or individuals that were acting as agent for the companies?

A. No, I don't say that.

Q. Well, are there other places in the book where such authority is given.

289 A. There may be ; I don't know.

Q. Well, now, take this meeting of June 18th. What other business was done on that day in reference to a distribution of stock or division of stock or issue of stock or in any way relating to the holders of stock, in this company, the General Paper Company.

Mr. Flanders hands book to witness, and witness after inspecting same hands book back to Mr. Flanders.

Q. Well, will you answer ?

Mr. FLANDERS : Do you find anything on those subjects ?

WITNESS : Something on the stock.

Q. On the stock. Well, what is it ?

Mr. KELLOGG : I wish you would make a note that the witness passes the book back to his counsel, and waits for counsel to tell him whether he is to answer or not.

Mr. FLANDERS : Make a note of all the things that Mr. Kellogg wants from now on to the end of time. You don't need any particular request for it. Anything that I say or do you may put down to the queen's taste.

Q. Will you answer the question ?

Mr. FLANDERS : Now, Mr. Alexander, he wants you to read the portion of the minutes that relates to stock and I have no objection.

Mr. KELLOGG : Well, I wish it to be submitted to counsel.

Mr. FLANDERS : Well, we will submit it to you.

270 (Mr. Flanders hands book to Mr. Kellogg, placing pieces of paper over a portion of the page, and disclosing another portion of same.)

Mr. FLANDERS : They wish you to read that, Mr. Alexander, from here down to there (handing book to the witness).

A. (Reading:) " Upon motion, duly seconded—— "

Mr. KELLOGG : Wait a moment.

Mr. FLANDERS : Go ahead.

WITNESS : " Upon motion duly seconded and carried, it was ordered that the roll of directors be called and ascertain which of directors and stockholders present would go on, and total shares of stock taken, and close contracts for completing the organization. Roll call resulted as follows.

Mr. SEVERANCE : Read it.

WITNESS : " J. A. Kimberly and F. C. Shattuck, yes, taking total of 260 shares ; C. W. Howard, yes, taking total of 34 shares ; J. Van Nortwick, yes, taking total of 90 shares ; T. E. Nash, yes, taking total of 145 shares ; L. M. Alexander, yes, taking total of 72 shares ; F. Garrison, yes, taking total of 46 shares ; John Daly and E. T. Harmon, yes, taking total of 54 shares ; George A. Whiting and

C. A. Babcock, yes, taking total of 72 shares; W. L. Edmunds, yes, taking total of 54 shares; N. H. Brokaw and E. A. Edmunds, yes, taking total of 45 shares; A. M. Pride and C. B. Pride, yes, taking total of 18 shares; D. R. Davis, yes, taking total of 81 shares; B. F. Nelson, yes, taking total of 29 shares."

Q. Is that all in reference to shares?

A. Yes, I think it is.

Q. There is nothing else in that meeting in reference to shares of stock or going on with the business?

271 A. Nothing else in reference to shares of stock.

Q. Or going on with the business.

A. There is something else about going on with the business, yes sir.

Q. Please read it.

Mr. FLANDERS: Read it to him, Mr. Alexander.

Mr. KELLOGG: Or let me see it so I can look it over.

Mr. FLANDERS: Read it to him, Mr. Alexander.

A. (Reading:) "Upon motion of J. E. Kimberly, duly seconded and carried, it was ordered that seventy-five per cent. of the capital stock be apportioned to the stockholders at once and the secretary call in thirty per cent. of such seventy-five per cent. of capital stock, such assessment notice to be given and the amount paid in at once."

Q. Well now, that has reference to stock, hasn't it.

A. Yes sir.

Q. I thought you said a few moments ago there was nothing else.

A. No.

Q. You did not? Now please read the resolution in reference to the contracts.

Mr. FLANDERS: That has been read, hasn't it?

Mr. KELLOGG: No, he didn't read that.

A. (Reading:) "Upon motion Director Nash, duly carried, it was ordered that all contracts between mills and General Paper Company as selling agents be in secretary's hands on or before Saturday, June 23, 1900, same to be held by secretary until all are in and approved."

Q. Now, before I leave it, the men whose names you read and to whom stock was to be issued, were each connected with a
272 paper company, the list of which you gave as the first fourteen joining the combination, were they not—each connected with those companies?

A. I think so.

Mr. FLANDERS: I don't like to keep making that objection. I presume it is inadvertence on your part, Mr. Kellogg, but you keep speaking of it as a "combination." If you mean to incorporate in your question—

Mr. KELLOGG: I mean by "combination" the joining of these

various mills and making this General Paper Company its selling agent and giving it control of its output.

Mr. FLANDERS: That there is no dispute about, that they have.

Q. And each one of these men was a stockholder and a director of the General Paper Company.

A. Of the list I read.

Q. Yes, of the list that you just read.

A. Yes sir. I want to modify that. I won't say "director;" they were either directors or stockholders of the General Paper Company—the list I read.

Q. Wasn't each man a director?

A. I think not, no sir.

Q. You think not.

A. I think not.

Q. Well, one man from each one of those mills, one man connected, either as a stockholder or a director, or an officer, of each one of those mills, in the companies named by you, was also a stockholder or a director in the General Paper Company.

A. I think so.

Q. Didn't each one of those mills in the companies named by you have a director in the General Paper Company?

273 A. I think I testified to that just now.

Q. They did; that is what I understood you.

A. I did.

Q. Wasn't the number of directors from time to time fixed so as to correspond with the number of mills in the combination, so that each mill had a director in the General Paper Company.

A. No, I don't think it was.

Q. Well, we will follow it up and see. Give me the list of the first board of directors and when they were elected.

A. May 26, 1900.

Q. Give the first director.

Mr. FLANDERS: Let me suggest, Mr. Kellogg, that I think you have got that list sworn to by Mr. Alexander.

Mr. KELLOGG: Let him give it from the book.

Mr. FLANDERS: All right; only I say that, because it is a matter of some detail to get it out of a book.

A. T. E. Nash.

Q. Did he represent one of the mills, one of the first list of mills, that you named here, and what mill?

A. He was president of the Nekoosa Paper Company. John A. Kimberly.

Q. He was the president of what company?

A. President of the Kimberly and Clark Company. John Daly, president of the Grand Rapids Pulp and Paper Company. George A. Whiting, I think he was president of the Wisconsin River Paper and Pulp Company. A. M. Pride was an officer, I think, of the

Tomahawk Pulp and Paper Company; I don't remember his title unless it was treasurer D. E. Reese: I don't know that he was

274 a stockholder or representative in any paper mill company.

Q. Where did he live?

A. He lives at Appleton, I think.

Q. What mill is he connected with?

Mr. FLANDERS: What mill is he connected with or was he.

Q. What mill was he at that time connected with?

A. I don't know.

Q. Wasn't he in the employ of any mill?

A. I couldn't tell you that, if he was in the employ or not, but I think he was with the Combined Locks Paper Company.

Q. You think he was. Isn't he yet?

A. I couldn't tell you. I think he is.

Q. Go ahead.

A. L. M. Alexander, president of the John Edwards Manufacturing Company. F. Garrison, was secretary of the John Edwards Manufacturing Company.

Q. And also an officer of what company?

A. He was also president of the Centralia Pulp and Water Power Company. C. W. Howard; I think he was president of the C. W. Howard Company. C. A. Babcock, I think, was an officer of the Wisconsin River Paper and Pulp Company—either secretary or treasurer.

Q. Wasn't he an officer of some other company also?

A. Not that I know of. I couldn't say. And N. H. Brokaw, he was president, I think, of the Wausau Paper Mills Company. W. L. Edmunds was secretary, I think, of the Wausau Paper Mills Company.

275 Q. Didn't he also represent the Falls Manufacturing Company?

A. I think he was an officer at that time.

Q. At that time he was.

A. I think he was.

Q. Now, have you given all of the first directors?

A. No sir.

Q. Go ahead.

A. E. T. Harmon: I don't think he was a stockholder or officer in any company at that time. I think he was business manager, or something, for the Grand Rapids Pulp and Paper Company. D. R. Davis: I think he was president of the Delia Paper and Pulp Company. W. Z. Stuart: I do not know that he was interested or a stockholder in any paper company.

Q. What mills was he connected with?

A. With the Kimberly and Clark Company, or had been, as sales agent.

Q. In some of their mills?

A. In some of their group of mills. J. C. Kimberly: I do not

know what connection he had, whether he was a stockholder or officer in any paper mill company.

Q. Was he a relative of J. A. Kimberly?

A. He is a son of J. A. Kimberly.

Q. Was he business manager or in the employ of any of the mills?

A. I couldn't tell you that.

Q. Don't know.

A. No sir.

Q. Now who else?

A. F. C. Shattuck: I think he was an officer of the Kimberly and Clark Company.

Q. Wasn't he also an officer of the Atlas Paper Company?

A. I couldn't say as to that.

276 Q. Wasn't he connected with it in some way at that time?

A. I couldn't say.

Q. Hasn't he been since?

A. I couldn't say what relation he sustained to the Atlas Paper Company.

Q. You never knew anything about it?

A. No sir, not whether he was connected with them or not; I don't know.

Q. And your business has not brought you in contact with him in connection with the Atlas Paper Company at all.

A. No sir.

Mr. FLANDERS: Who is that you are asking about?

WITNESS: F. C. Shattuck.

Q. Who were the officers and managers of the Atlas Paper Company at that time?

A. I think Mr. Kimberly was the president of the Atlas Paper Company.

Q. Mr. Kimberly was.

A. I think he was.

Q. And wasn't J. C. Kimberly an officer of it?

A. I couldn't say as to that.

Q. Have you given all the directors?

A. Yes sir.

Q. That is seventeen directors.

A. Yes sir.

Q. That is the total number of directors that your articles of incorporation then authorized.

A. Yes sir.

Q. The Hennepin Paper Company had no director when you started.

A. I don't understand the question.

Q. You don't know what I mean?

A. No sir.

Q. Was there any man a director of the General Paper Company who was connected with the Hennepin Paper Company?

A. Not that I know of; there is nothing that indicates it here.

277 Q. You have no recollection about it.

A. I just read the list of the directors.

Q. Well, you know subsequently he was made a director, don't you?

A. Yes sir, I do.

Q. Well now then, had his mill subscribed. Let me see that list of stockholders. He had not subscribed for stock at that first meeting of May 26th, 1900.

Mr. SEVERANCE: "He" doesn't mean anything; Mr. Nelson.

Q. Mr. Nelson hadn't subscribed for stock at the first meeting of May 1900?

A. No sir.

Q. So that at the time you elected your first board he was not a stockholder?

A. No sir.

Q. But subsequently became a stockholder.

A. Yes sir.

Q. And subsequently you elected him a director.

A. Yes sir.

Q. And you did elect a director subsequently from among the officers or stockholders or directors of every single mill that joined this combination?

A. I think so.

Q. When was the next board of directors elected?

Mr. FLANDERS: Well now, Mr. Kellogg, let me say just a word. I don't want to be hypercritical on this subject, but if you keep calling this "combination" long enough and often enough, you will make an impression on somebody.

Mr. KELLOGG: Wouldn't be surprised.

Mr. BECK: We hope that we will.

Mr. FLANDERS: That is all right, but make the impression by your evidence and not by your questions.

Mr. KELLOGG: I will try and do it.

278 Mr. FLANDERS: That is all I say. If you can convict us of being a combination, that is all right, but don't do it by putting it in the questions all the time and arguing afterwards that we accepted it.

Mr. KELLOGG: I don't think there will be any misunderstanding as to what I mean.

Q. When was the next board of directors elected, Mr. Alexander?

A. In December of that same year.

Q. December, 1900.

A. December, 1900.

Q. Were there any directors elected or vacancies filled between

this meeting of May 26, 1900 and December, 1900 when you held your next meeting, for the election of directors?

A. I think there was.

Q. Please look at the books and find out who was elected a director between May 26th and December 1900, and the date and the name of the party.

(Witness refers to the record book.)

A. Under date of June 18, 1900, B. F. Nelson was elected a director in place of J. C. Kimberly resigned.

Q. Well now, wait a moment. That is June 18, 1900, did I understand you, Mr. Alexander?

A. Yes sir.

Q. Now was there any stock awarded to Mr. Nelson at that time?

A. Mr. Nelson subscribed for one share of stock at that time.

Q. Just one share?

A. Yes sir.

Q. Mr. Nelson subsequently got some more stock, didn't he?

A. Yes sir.

Q. When did he get that?

A. He was on this supplementary list shown on page 16 for 29 shares.

279 Q. When was his name put on that?

A. I can't remember just the date.

Q. You have no knowledge.

A. I have no knowledge.

Q. That supplementary list wasn't made at the time you had your meeting May 26th, 1900, was it?

A. No sir.

Q. It was subsequently made and put in that book.

A. Yes sir.

Q. Now when was that?

A. I can't recollect the date.

Q. From time to time, as men like Mr. Nelson came into the company I suppose?

A. No sir, I think it was made before we commenced to do business, sometime in June, it might have been; I couldn't say.

Q. You say Mr. Nelson didn't have 22—or didn't have any except one share when you commenced business in June. He only had one share, you say, when you commenced business in June.

A. I didn't say that.

Q. When did he get the balance of that stock?

A. At the time that it was issued, somewhere in 1901, all of it was issued to him.

Q. I know, but when did he subscribe for the other shares of stock? the other 21½ shares of stock?

A. I have already stated that I do not know the date. I have no means of knowing.

Q. You say that he got it before the company commenced to do business.

A. I think he signed for that before the company commenced to do business on the 5th of July; I think he did but I don't know positively.

280 Q. He signed for it when he signed a contract and became a member of the General Paper Company, did he not?

A. I don't recall those conditions.

Q. Before he made that company his agent he was taken in and allowed 22½ shares wasn't he?

A. I don't recollect the exact time when he took the other stock, when he subscribed for it.

Q. Well, you were secretary, weren't you?

A. Yes sir.

Q. Didn't you keep a record of it?

A. I didn't keep a record of that date, no sir.

Q. Don't your books show when he paid for it?

A. Yes sir.

Q. Or when the Hennepin Paper Company paid for it?

A. Yes sir.

Q. And it was paid for by ordinary check, wasn't it, the Hennepin Paper Company check?

A. I think it was.

Q. Now don't your treasurer's books show when each and every share was paid for and the checks of the company paying for it?

A. I think it does.

Q. Will you produce those books, Mr. Alexander?

Mr. FLANDERS: You may bring the treasurer's book here.

Q. Bring the treasurer's book here.

A. It is incorporated in our general ledger, Mr. Flanders.

Q. Very well, bring the general ledgers.

Mr. FLANDERS: Bring the general ledger up here.

Mr. KELLOGG: Well, bring a transcript of the books showing the payment of all stock separately stated; the dates when the stock was paid for and by what companies it was paid for, a complete transcript of your books I think we better ask for the books. If you will produce the books they are the best evidence.

Mr. FLANDERS: We can't bring the books up here and disorganize that whole company.

Mr. KELLOGG: Well, I will ask for them.

Q. Now, Mr. Nelson was elected at that meeting, June 18, 1900. What other directors were elected at that meeting?

A. No other directors.

Q. Were any other directors elected between that meeting and December?

A. Yes sir.

Q. At what meeting were they elected and give the names of the directors?

A. On September 28, 1900, D. E. Reese and B. F. Nelson resigned and J. S. Van Nortwick and E. A. Edmunds were elected directors in their place.

Q. Who are the last names?

A. J. S. Van Nortwick and E. A. Edmunds.

Q. Had they previously been directors?

A. No sir.

Q. What companies were they connected with?

A. J. S. Van Northwick?

Q. Yes.

A. Connected with the Combined Locks Company.

Q. Any other?

A. I could not tell you.

Q. You don't know. In what capacity was he connected with that company?

A. I think as vice president.

Q. What was the other gentleman's name?

A. E. A. Edmunds.

Q. What was he connected with?

A. The Falls Manufacturing Company.

Q. Any other company?

A. I don't recollect what other company he was connected with.

282 Q. In what capacity was he in the Falls Manufacturing Company?

A. He was secretary, I think, or treasurer.

Q. What meeting was that at?

A. September 28, 1900.

Q. What other changes occurred?

A. I think that is all.

Q. When was the next meeting? In December?

A. The next stockholders' meeting?

Q. Yes sir.

A. For the election of directors?

Q. Yes sir.

A. Yes sir.

Q. On what pages of the record is that stockholders' meeting shown?

Mr. FLANDERS: Which stockholders' meeting are you asking about?

Mr. KELLOGG: December, the first annual meeting.

A. December, 1900.

Mr. FLANDERS: Give him the pages it is on.

WITNESS: 33 to 37, inclusive.

Mr. KELLOGG: I offer those pages in evidence.

Mr. FLANDERS: Well, you need not produce them, Mr. Alexander.

Mr. KELLOGG: What is that?

Mr. FLANDERS: We won't produce those on that statement alone.

Q. Do those pages show the election of the directors at the annual meeting in December, 1900?

A. Yes sir.

Q. Do they show the amount of stock voted and by whom voted?

A. Yes sir.

Mr. KELLOGG: I offer those in evidence.

283 Mr. FLANDERS: We won't produce them. Now these portions that Mr. Kellogg has just inquired about we will either submit to his inspection, or Mr. Alexander can testify from the book as he prefers; but we decline to submit to his inspection or have him offer in evidence broadcast the entire minutes of this meeting. Let me see that book.

Witness hands the book to Mr. Flanders.

Q. Was there any business done at that meeting except the election of directors?

A. Yes sir.

Q. What was it?

(No answer.)

Q. Are you willing to answer?

A. Just the usual routine business, as I recall it, without looking at the records.

Q. Any contracts approved?

A. I would have to examine the records to see.

Q. Please look and see.

A. (After examining book). No sir, I don't see anything referring to that matter.

Q. Will you please give us the list of directors elected at that meeting, with what companies they were connected, and read the minutes of the stockholders' meeting showing their election. Have you any objection to my seeing those?

Mr. FLANDERS: Not that part of it; not at all. All there is to it is right here (showing book to Mr. Kellogg, after which the book was handed to witness by Mr. Flanders).

Q. Commence at the beginning of the meeting.

284 Mr. FLANDERS: Do you want the meeting of the stockholders first.

Q. I want the formal minutes, showing the meeting came to order, when it was held and where it was held.

A. The stockholders' meeting of December 11, 1900. Do you want the list of stock represented?

Mr. FLANDERS: He wants you to read the formal part.

Q. Read the whole thing. Commence at the beginning and read it through.

A. You mean the whole of the minutes?

Mr. FLANDERS: No, down at the end of that page.

Q. Is that the beginning of the minutes of the meeting?

A. Yes sir. (Reading:) "The annual meeting of stockholders of General Paper Company met pursuant to notice issued in due form November 28th, 1900, calling such meeting to convene, on Tuesday, being the second Tuesday of December 11th, 1900, in Milwaukee, Wisconsin. Stockholders' meeting called to order, and on motion duly carried elected J. A. Kimberly chairman of the stockholders' meeting, L. M. Alexander secretary of the stockholders' meeting. Stock represented as follows:

Stock subscribers representing shares.	Shares present and voting.	Shares absent and not voting.
J. A. Kimberly, F. C. Shattuck... {	260	260
W. Z. Stuart, J. C. Kimberly..... }		

Q. Can you give the separate ownership at that time of those three or four men?

Mr. FLANDERS: The amount that each owned severally, do you mean, Mr. Kellogg? What do you mean by the words, 285 "separate ownership"? The amount of stock that each owned?

Mr. KELLOGG: Yes, that each owned.

WITNESS: I would have to go back to the stock subscription list.

Q. Well, complete the list and then I will ask you the questions.

A. (Continuing:)

C. W. Howard.....	34	34
J. S. Van Northwick, D. E. Reese.....	90	90
T. E. Nash.....	145	145

Q. These are voting, you know?

A. Yes.

L. M. Alexander.....	72	72
F. Garrison.....	46	46
John Daly & E. T. Harmon.....	54	54
George A. Whiting, C. A. Babcock.....	72	72
W. L. Edmunds.....	54	54
N. H. Brokaw and E. A. Edmunds.....	45	45
A. M. Pride	18	18
D. R. Davis.....	81	81
H. M. French.....	1	1
Treasury.....	28	28

Total shares 1000.

Shares present and voting 953.

Absent and not voting 47.

Q. Now, Mr. Alexander, where is the stock that Mr. Nelson had B. F. Nelson, the 22½ shares that you said he had before they commenced business? Isn't it represented in the treasury stock?

286 A. My recollection is that he surrendered his stock and resigned as a director, surrendered his right to stock.

Q. Is there any record of that in that meeting?

A. You have read a record of his resignation.

Q. As a director. That was in September.

A. In September.

Mr. FLANDERS: 23th of September, 1899.

WITNESS: 1900 this is in each case.

Q. Where is the record of his surrender of that stock in the meetings?

Mr. FLANDERS: See if you can find any such record.

Mr. KELLOGG: Perhaps you had better complete this record first. I will withdraw that question if counsel is willing, and will you please read the rest of the minutes of the meeting showing the election of the directors.

Mr. FLANDERS: That is over on this side (Mr. Flanders covering up another page with a sheet of paper).

Q. Now go ahead. Where are you commencing to read now?

A. On page 35.

Q. Have you skipped two pages?

A. Nearly.

Q. Why don't you read the rest of those pages.

Mr. FLANDERS: I will state his answer, then.

Mr. KELLOGG: I wish the witness to state his answer himself.

Mr. FLANDERS: This book is the record book of the General Paper Company, of which I am the counsel, and I have declined and decline again to submit to the inspection of counsel the records 287 of this company without restriction. If you want it in the record a few more times make those same questions.

Q. Do you decline, Mr. Alexander, to read the rest of the minutes of the meeting of the stockholders which you skipped?

(Mr. Flanders closed up the book and took it away from witness.)

Answer. On advice of counsel, I do.

Mr. FLANDERS: If you want the rest of that read you can have it read.

Mr. KELLOGG: We will get it, don't you forget.

Mr. FLANDERS: If you want this grandstand play! Now we tender to the counsel upon the other side the inspection of such portions of this meeting of the stockholders as the witness has been examined about as relates to the election of the directors at that meeting.

Q. Please read the rest of the minutes.

Mr. FLANDERS: They have already been submitted to him and he can read them himself into the record, or the witness will.

Q. Please read the rest of the minutes.
(No response.)

Mr. KELLOGG: Will the examiner please note that the counsel took the book away from the witness.
(The book was handed back to the witness by Mr. Flanders.)

Mr. FLANDERS: Read him the part he wants.

WITNESS (reading): "Upon motion T. E. Nash, seconded by
288 F. C. Shattuck,"—

Q. What you are reading is after the omission, is it?

A. This relates to the election of directors.

Q. Wait a minute. But it is after the pages you have skipped, between what you read previously and what you are starting to read now, is it?

A. Yes sir.

Q. All right, proceed.

Mr. FLANDERS: Now read it.

WITNESS (reading):—"seconded by F. C. Shattuck, the secretary was ordered to cast the ballot of all stock represented for the following directors for the ensuing year: J. A. Kimberly, T. E. Nash, John Daly, Geo. A. Whiting, A. M. Pride, J. F. Van Nortwick, L. M. Alexander, F. Garrison, C. W. Howard, C. A. Babcock, H. M. French, E. A. Edmunds, W. L. Edmunds, E. T. Harmon, D. R. Davis, W. Z. Stuart, F. C. Shattuck. Secretary having cast ballot as above, they were by the chairman of stockholders' meeting declared elected as directors of General Paper Company for ensuing year."

Q. Is this all the records of that meeting referring in any way to the election of directors?

A. I think so.

Mr. KELLOGG: I ask leave to examine the records of the meeting of the stockholders—

Mr. Flanders closes up the book and takes it away.

Mr. KELLOGG:—of that meeting held on that day, to test the correctness of the witness' statements.

Mr. FLANDERS: For reasons heretofore stated, the request is declined.

289 Q. You decline to allow me to see the book?

Mr. FLANDERS: Oh well, Mr. Alexander, you need not answer that. The counsel knows the book is in my possession. It has been so stated.

Q. Mr. Alexander, do you decline to allow me to see the book, the minutes of the meeting on that day?

Mr. FLANDERS: You needn't answer.

Mr. KELLOGG: Just please note that the witness declines to answer.

Mr. FLANDERS: Note what he does and what he doesn't do; not what counsel says.

Q. Please take the book and look at the list of directors. I wish to ask some questions about that.

(The book is handed to the witness by Mr. Flanders.)

Q. Now is the book in your possession now, Mr. Alexander? Is the book in your possession now, in your physical possession?

(No response.)

Mr. KELLOGG: Please note that the book is in the physical possession of the witness and that he declines to answer the question.

Mr. FLANDERS: Please note that the counsel has got the book in his possession upon a statement which won't bear investigation, viz: That he wanted to ask him questions about this list of directors.

Q. Do you decline to state whether you have the book now before you so that you can see the names of the directors, Mr. Alexander.

A. I have the book before me now.

Q. In your possession?

A. Yes sir.

290 Q. Very well. Now then give the name of the first— what is the name of the first director elected?

A. J. A. Kimberley.

Q. He is the president of the Kimberley & Clark Company?

A. I think so.

Q. And he was at that time?

A. I think he was.

Q. The next?

A. John Daly.

Q. What company was he connected with at that time and what capacity?

A. I think he was president of the Grand Rapids Pulp & Paper Company.

Q. Go ahead.

A. George A. Whiting; I think he was president of the Wisconsin River Paper & Pulp Company. A. M. Pride: I think he was an officer, treasurer or secretary of the Tomahawk Pulp & Paper Company. J. S. Van Nortwick, I think was the vice-president of the Combined Locks Paper Company. L. M. Alexander: I was president of the John Edwards Manufacturing Company. F. Garrison, was president of the Centralia Pulp & Water Power Company. C. W. Howard I think was president of the C. W. Howard Company. C. A. Babcock I think was secretary or treasurer of the Wisconsin River Paper & Pulp Company. H. M. French was our sales manager, of the General Paper Company.

Q. He had one share, did he not?

291 A. E. A. Edmunds was secretary or treasurer, I think, of the Falls Manufacturing Company. W. L. Edmunds was secretary or treasurer, I think, of the Wausau Paper Mills Company. E. T. Harmon was the business manager, I think, or the general manager of the Grand Rapids Pulp & Paper Company. D. R. Davis, I think, was president of the Dells Paper & Pulp Company. W. Z. Stuart, I think, was sales agent for some of the Kimberly & Clark Company's mills. F. C. Shattuck was secretary, I think, of the Kimberley & Clark Company.

Q. Didn't you skip Mr. Nash?

A. No sir, I didn't intend to. T. E. Nash was president of the Nekoosa Paper Company.

Q. What is the total number?

A. Seventeen.

Q. Your articles only permitted seventeen directors at that time, did they?

A. I think that was all.

Mr. KELLOGG: I wish the examiner to identify by some marks each page of this meeting of December 11, 1900, and I offer each page in evidence. Please identify each page by a mark.

Mr. FLANDERS: We have no objection to him identifying the pages.

Pages 33 to 37 inclusive of Petitioner's Ex. 29, were marked on each page with the initials of the examiner, "R. S. T."

Mr. KELLOGG: I offer each of those pages in evidence and ask the examiner to enter them in his record.

Mr. Flanders takes the book into his possession.

292 Mr. KELLOGG: Will you please take copies of those pages, Mr. Examiner, or else enter the reason why? I wish the examiner to enter a statement as to how the book was taken from him. Do you object to letting the examiner copy those pages as offered in evidence?

Mr. FLANDERS: I certainly do. I have repeated it over and over again. You have got your point, if it is a good one, and you might stand on it. In the present state of the record we decline to submit those for your inspection, or allow them to be read into the record.

Q. Mr. Alexander, is there any record at that meeting in those pages marked by the examiner relative to the business between these various defendant companies, or any of them, and the General Paper Company?

A. I don't think so.

Q. Do you know whether there is or not?

A. I don't think there is.

Q. Do you say there is not any such business?

A. I think there is not.

Q. I ask to examine the book to see whether there is any such business. It is refused, is it?

No response.

Q. Is it refused, Mr. Alexander? Do you refuse to let me see the book?

A. I haven't the book in my possession.

Mr. FLANDERS: Now, Mr. Kellogg, I am endeavoring in good faith to give you what I think you are entitled to. Now I
293 prefer that you would not ask me to give this book to the witness to read extracts from it, and then put questions to him as though it were in his possession. If that is what you continue to do I shall have to take some other course.

Mr. BECK: Inasmuch as the book was originally in the witness' possession, and was taken from the witness by Mr. Flanders, his suggestion seems to be without justification.

Mr. FLANDERS: The statement of the distinguished counsel from New York is an error.

Mr. BECK: We will have to abide by the record.

Mr. FLANDERS: Yes, I understand.

Q. You say Mr. Nelson's stock was surrendered?

A. I don't recall just how it was treated.

Q. Do the records of the meetings of the stockholders or directors of the General Paper Company show how it was treated?

A. I don't think there is anything there with reference to that.

Q. Well, do you know whether there is or not?

A. I think there is.

Q. Well, do you know whether there is or not?

A. Nothing more than what I have stated.

Q. Please look and see.

294 Mr. FLANDERS: Now look and see if you can find anything in relation to Mr. Nelson's stock being surrendered. (Handing the book to the witness.) If there is, why, read it to Mr. Kellogg.

A. (After examining book.) No sir, I see nothing pertaining to that.

Q. Nothing in which the Hennepin Paper Company is mentioned, or Mr. Nelson is mentioned prior to December, and this meeting that you refer to?

A. Between September 28 and December, no sir.

Q. Well, is there between May 28, 1900, and September 28, 1900, anything in reference to the surrender of that stock or in reference to the stock that Nelson subscribed for?

Witness having passed the book back to Mr. Flanders during the time the question was being asked, again takes it into his possession and inspects same.

A. No sir.

Witness hands book to Mr. Flanders.

Q. There is nothing between the first meeting of this corporation

on December 11, 1900, in reference to the Hennepin Paper Company or Mr. B. F. Nelson at all, other than what you have read?

A. No sir.

Q. How do you know he surrendered his stock?

295 A. I don't think I said he surrendered his stock.

Q. Well, what did you say about it?

A. I said that it must have been cancelled, but I am not familiar—I can't recall just what was done in reference to that matter.

Q. What?

A. I say I can't recollect what was done in reference to that matter.

Q. Can you by looking at the stock books?

A. No sir.

Q. Why can't you by looking at the stock books?

A. Because this record here is something that must have been fixed subsequent, as to the amount of stock.

Q. I show the witness Exhibit 28. Whose handwriting is that?

A. That is mine.

Q. When did you make that book?

A. Started it about the 31st of December, 1901, or thereabouts.

Q. Is each entry in that book made on the date it purports to be,—that the transaction purports to have been had?

A. Very nearly so; approximately.

Q. I refer you to page 2.

A. Yes sir.

Q. To the entry showing the transfer of stock from E. Ballou to S. E. Smith, which purports to have been done on December 13, 1904. Was that entered at that time?

A. Very nearly that time.

296 Q. How near?

A. I couldn't say exactly.

Q. Wasn't that written within the last few days?

A. No sir.

Q. Isn't that pretty fresh writing?

A. It seems so.

Q. I turn to page 3: Were those entries all made before January

1, 1905?

A. Probably not before January 1st, but very shortly after.

Q. After the commencement of this suit?

A. I couldn't say.

Q. Didn't you make them?

A. Yes sir.

Q. Haven't you any recollection at all about it?

A. Well, I say that they were made about—sometime in January.

Q. Some time in January?

A. Yes sir.

Q. After you heard of the commencement of this suit?

A. It might have been.

Q. Then, all those entries with reference to stock having been

issued from December 9, 1902, to December 13, 1904, were made after January, were they, 1905?

A. They might have been; I think they were.

Q. Yes sir.

A. No, not after January.

Q. But during January, 1905?

A. Yes sir, I think so.

Q. And some of the entries on the previous page were made during the same month, were they not?

A. I think so; whenever the others were made. I made them all together.

297 Q. Did you make all the entries at the same time?

A. I think so.

Q. That is, the entire book?

A. No sir, I am talking about these.

Q. Now turn to the entries on page 2, showing the transfer of stock E. A. Edmunds to J. H. Delbridge and George W. Mead; that was made in January, was it?

A. I think so.

Q. You say you took those books to Mr. Flanders in the winter of 1905?

A. Yes sir.

Q. Before or after you made those entries?

A. After I made the entries.

Q. After you made the entries?

A. Yes sir.

Q. Where is the stock register that preceded that?

A. We never had any.

Q. You never had any?

A. No sir.

Q. Have you any other stock register than that?

A. No sir.

Q. Never had any?

A. No sir.

Q. No account in any books showing the issue of stock?

A. Yes sir. We never issued any stock excepting that.

Q. Well, I know, but have you any account in your books showing each issue of stock, the date it was issued, and each transfer of stock other than that record?

A. No sir.

298 Q. Well, no certificate of stock was ever issued for the first eighteen months of the business of this company?

A. No sir.

Q. Your books must show to whom the stock was issued before that?

A. We didn't issue any.

Q. It was paid for before that, wasn't it?

A. Partly paid for.

Q. And your books show who the subscribers were and who paid for it, do they?

A. Yes sir.

Q. That is the book you refer to that is in Chicago?

A. Yes sir.

Mr. KELLOGG: Now I ask that that original book be produced in court before the examiner.

Mr. FLANDERS: I don't know whether we can produce that book here or not.

Q. Well, will you produce it?

A. I can't answer.

Mr. FLANDERS: I will say this to you: We will either produce it or at some time that is convenient we will go to Chicago with you and submit such entries in that book as relate to the payment of this stock.

Mr. KELLOGG: It is more convenient, Mr. Flanders, to examine these witnesses, who are all subpoenaed here, with reference to that book, in this city.

299 Mr. FLANDERS: I would like to accommodate you, but I don't believe you want to disorganize the business of this concern by making them take their books one hundred miles away from the place where they are used every day.

Q. That is a book you can produce, is it?

A. Yes, it can be produced.

Q. Is it in use every day?

A. I think it is; I can't tell—

Q. Do you know whether it is or not?

A. I can't tell exactly, not without examination of the office force.

Q. The book that shows all the entries in 1900 and 1901, is that in use today?

A. Some of those ledgers are in use today.

Q. You don't know whether that particular book is in use or not?

A. I can't say now.

Mr. FLANDERS: I can say this to you: That if we can produce that book without serious inconvenience to the business, we will be very glad to accommodate you in that respect.

Q. What was issued to the various parties for this stock or for their payments in the first instance?

A. I don't think anything was issued; just simply acknowledgment of payment.

Q. How did you make up the list of stockholders for each one of these meetings?

A. From the subscriptions.

Q. Those subscriptions do not agree with the list of stockholders as they were voted?

A. Not technically, no sir.

300 Q. How did you make up the technical one, then?—the correct one?

A. From the record which I read to you, at the meeting some time in June.

Mr. KELLOGG: Will you just let me see that June record that he read?

Mr. FLANDERS: Is it the June 18th meeting?

WITNESS: I think that is the date, June 18th.

Mr. Flanders hands book to Mr. Kellogg, covering with paper a portion of same.

Q. Now, you made up your stock list for the December 1900 annual meeting from this meeting of June 18, 1900, did you?

A. I think so.

Q. In that Mr. B. F. Nelson appears to own 29 shares. Did you have him in the December meeting?

A. I don't think so.

Q. Then, will you tell me what book you made up that list from.

A. I think it was made up from that list, all excepting Mr. Nelson's.

Q. Well, turn to the list. I want to look at the two of them side by side and see how they compare, the annual meeting in December.

A. Is this the one you refer to? (Showing book to Mr. Kellogg.)

Q. A. M. Pride and C. B. Pride. Here you have it in the December meeting A. M. Pride alone. Did they represent the same interests?

A. I think they did.

301 Q. What company?

A. Tomahawk Pulp & Paper Company.

Q. In this is George A. Whiting and C. A. Babcock, 72 shares. Did they represent the same company?

A. I don't understand that question. I was caught on the other one.

Q. Were they representing the same company at that meeting, December, 1900?

A. I don't think they represented their company at all. They represented their stock there.

Q. Well, were they officers of the same company, George A. Whiting and C. A. Babcock?

A. Of the Wisconsin River Paper & Pulp Company, yes.

Q. They were?

A. I think they were.

Q. And you put their stock together, 72 shares, did you?

A. Yes sir.

Q. In whose name was it—George A. Whiting or C. A. Babcock?

A. I think their subscription was both.

Q. Together?

A. Yes.

Q. And they were both officers of the same company. That is correct, is it?

A. I think it is.

Q. Well, now, here are John S. Van Nortwick and D. E. Reese, 90 shares; I am reading from the meeting of December 11, 1900. Were they both officers of the same company?

A. I don't know.

Q. Well, who was Mr. Van Nortwick an officer of?

302 A. He was the vice-president of the Combined Locks Paper Co.

Q. Who was Mr. Reese an officer of?

A. I couldn't tell you.

Q. Who was he employed by?

A. I think he was employed by the Combined Locks Paper Company.

Q. The same company?

A. Yes, I think so.

Q. John Daly and E. T. Harmon, 54 shares; were they officers or interested in the same company?

A. Mr. Harmon was business manager of the Grand Rapids Pulp & Paper Company, I think.

Q. And John Daly, what was he?

A. John Daly was president of the Grand Rapids Pulp & Paper Company.

Q. The same company?

A. I think so.

Q. Now I notice that wherever you put the names together, the men were officers of the same company; isn't that true?

A. I think that is true.

Q. Do you put them down as representing the same interests; didn't you?

(No answer.)

Q. Did you?

A. I can't say that I put them down as representing the same interests, no.

Q. Well, do you deny that you did?

A. I don't know; I can't tell you.

Q. You can't say whether you did or not?

A. No sir.

Q. Very well. That will do just as well. Now from whom did you get the ownership of Mr. Nelson's stock for the June 18th meeting, and how did you come to drop him out in the December meeting?

303 A. I really couldn't tell you; I can't recall the conditions.

Q. Don't your ledger that you speak of, that is in Chicago, show you exactly who owned the stock at that time?

A. I don't think it does.

Q. It shows who paid for it?

A. It shows who paid on stock, yes sir.

Q. And it shows that all these companies paid on stock, don't it?

A. I couldn't say that it shows that Nelson paid—

Q. Did you ever see it?

A. I have, yes sir.

Q. It shows that the Hennepin Paper Company paid for some of this stock, doesn't it?

A. I don't know whether it does or not. I could tell by referring to it.

Q. Prior to the actual issuance of the certificates shown in Exhibit 27 what was given for the payment of this stock or any payments made upon this stock?

A. I think nothing but a plain acknowledgment.

Q. A receipt?

A. A receipt.

Q. Signed by you?

A. I think so.

Q. Did you keep copies of them?

A. I couldn't say; I think so.

Q. Did the receipts show the number of shares?

304 A. I couldn't tell you.

Q. And the amounts paid?

A. I couldn't tell you that, no.

Q. Have you any books here showing that?

A. Not here, no sir.

Q. Well, if it didn't show the amount that was paid, what kind of a receipt would it be?

A. I understood you to say the number of the certificate.

Q. Well, the amount paid, also.

A. The number of shares, I beg your pardon. The number of shares.

Q. Well, the amount paid?

A. Yes sir, it would show the amount paid.

Q. Now, was that surrendered when the certificate was issued?

A. I think it was, possibly.

Q. Have you got those?

A. I couldn't say.

Q. Will you look and see?

A. I will.

Q. Please make an examination and see if you have any receipts or acknowledgments or letters or documents of any kind issued for payments upon this stock prior to the time these certificates were issued? Will you do so?

A. I will.

Mr. FLANDERS: My attention was interrupted. What were you asking about—these receipts?

Mr. KELLOGG: Yes. He says they were returned.

WITNESS: I didn't say they were returned.

305 Q. Weren't they returned when the stock was issued?

A. I don't know; I couldn't say as to that.

The latter part of the witness' testimony was read.

Q. You said you think it was, possibly. What do you think about it now?

A. I think the same thing.

Q. You think they were?

A. I think possibly.

Q. Now prior to the issuance of these certificates of stock, was there any agreement with the various subscribers or mills that you were to hold this stock until all the mills got into the combination?

A. Never heard of anything of that kind.

Q. Was there any understanding of any kind that these certificates were not to be issued until the rest of the mills were got in, or any number of them, or you got all the mills you could, and then a redistribution of stock made?

A. Never heard of such a thing.

Q. No understanding of that kind?

A. Never heard of such a thing.

Q. The stock was not pooled?

A. I don't understand that question.

Q. You don't? Is there anything in the meetings of the board of directors or of the stockholders, other than what you have read, bearing upon the issue of this stock or the failure to issue it, or the ultimate distribution of it?

A. There might be something in the following year. The stock was not issued until 1901.

306 Q. Well, turn to it and let us see.

The book is handed to the witness by Mr. Flanders.

Q. Before you do that, may I ask another question, Mr. Alexander? What reason have you got to give for this stock not having been issued until December, 1901, eighteen or nineteen months after the organization? What was the reason?

A. Because the stock wasn't all paid up until that time, all the money paid up in full.

Q. It wasn't?

MR. FLANDERS: You can't issue any stock in this State until it has been fully paid for at par.

MR. KELLOGG: I wasn't aware it hadn't been fully paid, until now.

MR. FLANDERS: He said that once before.

Q. It wasn't fully paid until December, 1901?

A. No.

Q. When was it fully paid?

A. Some time during that month or about that time it was fully paid.

Q. These books in Chicago that you refer to will show that, will they?

A. I think so, yes sir.

Q. How was the stock paid for—out of earnings, dividends?

Objected to as irrelevant, incompetent and immaterial.

A. Paid for by checks sent by the mills.

307 Q. By the various mills?

A. By the stockholders.

Q. By the mills?

A. Yes sir.

Q. And that applies to the last payment as well as to the first?

A. Yes sir.

Q. Applies to all the payments, doesn't it?

A. I think so.

Q. They were sent from the various mills?

A. I think so.

Q. Now, were dividends credited on these payments in the books?

Mr. FLANDERS: Objected to for the same reason.

A. No sir.

Q. Never any dividends credited as payment on those?

A. No sir, not that I know of, not that I recall.

Q. Well, were the checks for dividends returned and applied on this stock?

A. I don't understand that question.

Q. Were checks sent out by the General Paper Company for dividends returned and applied as payment on the stock or part payment?

A. No sir, I don't think so.

Q. Never?

A. No sir.

Mr. FLANDERS: I don't want to interrupt you, and I realize you are both from out of the State. We have a law on that very subject that it might be useful to know, but if you don't care to know—

Mr. BECK: We would be very glad to know it.

308 Mr. FLANDERS: You can't declare any dividend on stock until it has been fully paid for. In case it is done, the directors are individually liable to the amount of the dividend and it is a criminal offence.

Mr. KELLOGG: Suppose they are paid and sent out and simultaneously credited with payment on the stock.

Mr. FLANDERS: That would be in violation of our statute.

Mr. KELLOGG: Well, he says it wasn't done.

Mr. FLANDERS: I am simply explaining it.

Mr. KELLOGG: Yes, that is all right. Much obliged to you.

The following question was read to the witness by the examiner: Is there anything in the meeting of the board of directors or

of the stockholders other than what you have read, bearing upon the issue of this stock or the failure to issue it, or the ultimate distribution of it?

The witness has the book before him and examines the same, and hands the book back to Mr. Flanders.

Mr. FLANDERS: There is something in the meeting of 1901. Now we will either submit it to you or let him read it, as you prefer.

Mr. KELLOGG: Just submit it to me because I am going to take that up.

309 Mr. Flanders shows the book to Mr. Kellogg.

Q. Mr. Alexander, will you refer to the stockholders' meeting of December, 1901?

Mr. FLANDERS: Read the portion that is asked for there. (Handing the witness the book.)

Q. Read the resolution in relation to the distribution of stock, giving date of the meeting and the page of the record.

A. December 10, 1901, page 43 of Exhibit 29.

Q. What was that meeting—an annual meeting?

A. The annual meeting of the stockholders.

Q. How many pages does the annual meeting cover?

A. Pages 42 to 45 inclusive.

Mr. KELLOGG: I wish the examiner would please initial these pages so as to identify them.

Mr. FLANDERS: I don't see any object in that in view of the fact that he has given him the numbers.

Mr. KELLOGG: I would prefer to have it if the examiner is willing to do it.

Mr. FLANDERS: I don't think he has any business to initial without our consent pages that are not in evidence. But if you make a point of it, why I shall not object to it.

Mr. KELLOGG: I would like to have him initial them if
310 you don't object.

Mr. Flanders confers with Mr. Brace.

Mr. FLANDERS: I don't believe we will consent to that, Mr. Kellogg.

Q. Did you elect directors at that meeting?

A. Yes sir.

Q. And you also took action upon the issue of stock which you have referred to heretofore?

Mr. FLANDERS: He hasn't quite said that, Mr. Kellogg. You asked him if there was anything in these meetings relating to the issue of stock.

Q. I identified my question as well as I could. I mean to refer to those portions of the record which were submitted to me, in which you took some action with reference to the issuance of stock. Now, is there anything else in that meeting with reference to the business

between any of these defendant companies and the General Paper Company, or anything else other than that which was exhibited to me, in reference to the issuance, disposition, or division of the stock of this company or the payment therefor?

A. No sir, I don't find anything.

Mr. KELLOGG: I ask to have the book exhibited to me for examination to verify the testimony of the witness.

Mr. FLANDERS: The counsel for the General Paper Company again declines to spread open to the counsel for the Government the books of this company for a fishing examination.

Mr. KELLOGG: I don't ask for the book for a fishing examination. I wish to examine the meeting of the stockholders, its annual meeting in December, 1901, in reference to showing the election of directors, the voting of stock for the election of directors, and showing the action referred to by the witness in reference to the issuance of stock.

Mr. FLANDERS: The action in reference to the issuance of stock has already been submitted to the counsel for the Government and he has inspected it, and if he wishes to offer those portions of this meeting we will make no objection.

Mr. KELLOGG: What is that?

Mr. FLANDERS: We will make no objection to your offering those portions of the records of this meeting. We will also submit to your inspection the portions of the meeting showing the stockholders present and the directors elected, if you wish that submitted to you, although I think you have already given that in evidence. I may be wrong about the last, but I think you have. These books are ours; and until some stronger and more powerful and abler authority than you are decides differently, we won't turn you loose in them.

Mr. KELLOGG: All right, we will see.

Mr. FLANDERS: Well, we will see. You needn't keep saying that because we will be there every time you are there.

Q. Please read the minutes showing the election of the directors, all of the minutes.

Mr. FLANDERS: I have already told you that I would not show you these entire minutes.

Mr. KELLOGG: I ask him to read the entire minutes with reference to the election of the directors.

Mr. FLANDERS: You just said a moment ago that you wanted to see the entire minutes.

Mr. KELLOGG: If you will listen to my question you will see I didn't say that, Mr. Flanders.

Mr. FLANDERS: You made that remark. Now, Mr. Kellogg, just look here a minute.

Mr. Flanders shows Mr. Kellogg a portion of the book, other portions being covered with sheets of paper.

Q. Please read all of the minutes which pertain to the election of the directors, Mr. Witness.

Mr. Flanders hands the book to the witness.

WITNESS (reading): "Stockholders' meeting. The annual meeting of stockholders of the General Paper Company met pursuant to notice issued in due form (dated November 27, 1901) on Tuesday, December 10, 1901, in their general office, Old Insurance building, Milwaukee, Wisconsin. Stockholders' meeting called to order and organized by electing J. A. Kimberley, chairman, L. M. Alexander, secretary. All the stock was present in person, upon roll call, C. W. Howard's stock alone being represented by proxy, except one share represented by H. M. French." * * * "A majority of the stock being present, proceeded to business as follows" * * * "Upon motion T. E. Nash, seconded by C. A. Babcock and duly carried, it was ordered to proceed to the election of directors for the ensuing year, and that the secretary of the stockholders' meeting be authorized to cast the ballot of all the stock represented for the following: J. A. Kimberley, T. E. Nash, John Daly, George A. Whiting, A. M. Pride, J. S. Van Nortwick, L. M. Alexander, F. Garrison, C. W. Howard, C. A. Babcock, E. A. Edmonds, W. L. Edmonds, E. T. Harmon, D. R. Davis, F. C. Shattuck, B. F. Nelson, W. Z. Stuart. The secretary having cast the ballot for the above, the chairman declared them elected as directors for the ensuing year."

Mr. FLANDERS: Now do you want these other parts, Mr. Kellogg?

314 Q. You read the first part and then you skipped a part of the minutes, did you, Mr. Alexander?

A. Yes sir.

Mr. Flanders takes the book from the witness.

Q. Do you refuse to read that?

Mr. FLANDERS: Now, Mr. Kellogg—

Mr. KELLOGG: I propose to get Mr. Alexander on record as to every one of these, and I am going to do it in my own way.

Mr. FLANDERS: Well, do it in your own way, and I shall do my part in my own way.

Mr. KELLOGG: We are going to get to the bottom of this, and we are going to do it in a legal manner.

Mr. FLANDERS: Well, there isn't any jury here to make a speech to. They are all members of the General Paper Company except those from the Attorney General's office and from your office, and they wouldn't be an impartial jury.

Q. Now, do you refuse to read that part of the meeting which you skipped?

A. On the advice of counsel I do.

Mr. FLANDERS: Is the record in your possession?

WITNESS: No sir.

Q. Did you have it in your possession when you were reading, Mr. Alexander?

A. I think I did.

Q. You did? Who were the stockholders voting at that meeting?

315 A. The same stockholders that voted at the previous stockholders' meeting.

Q. How do you know?

A. Because there was no change.

Q. Mr. B. F. Nelson must have been there this time, wasn't he?

Mr. FLANDERS: Now why do you say that?

Mr. KELLOGG: I ask him if Mr. B. F. Nelson was not there.

WITNESS: He was, yes sir.

Q. Was he there at the previous annual meeting, which you read, in December, 1900?

A. I think not.

Q. Then how did you make up the list of stockholders who appeared at that meeting?

A. Took the list at the time.

Q. Took the list at that time?

A. At that time.

Q. What list?

A. Of the stockholders.

Q. From what books?

A. Can't tell you that now.

Q. Have you any book showing the list of stockholders at that time?

A. Nothing more than these records.

Q. Did you have a book at that time showing the list of stockholders at that time?

A. Nothing more than these records.

Q. Well, you said you took them from a book. Please tell me what book.

A. I took them from the people that were present.

Q. Oh, you called the roll?

A. Called the roll.

Q. And they put down their stock, whatever amount they claimed to have, did they?

316 A. Responded, yes sir, to the amount they had.

Q. You accepted that as final, did you?

A. Yes sir.

Q. You didn't check it up with any other book?

A. No sir.

Q. Where is the list?

A. I couldn't answer that question.

Q. Why didn't you enter it in the book?

A. I can't answer that question now.

Q. Who were the stockholders at that time and what amount did each have in his name?

A. I can't answer that question just now.

Q. Have you any books that show that?

A. Only these records.

Q. What records do you refer to when you say "these records"?

A. The records of the minutes.

Q. Is there anything in the record between the stockholders' meeting of December, 1900, and the stockholders' meeting of December, 1901, showing any transfer of stock?

A. There was no stock issued; only had the subscription list.

Q. Does that answer my question?

The question was read to the witness.

WITNESS: None only what I have already referred to.

Q. You haven't referred to any transfer between those dates, have you?

A. Yes sir.

Q. What ones?

A. The previous questions,—I looked the records through
317 and read what records there were in regard to the stock.

Q. Did it show any transfer of stock or rights to stock between December 1900—between the meeting of December 1900—and the meeting of December, 1901?

A. I think it does not.

Q. Do you know whether it does or not?

A. It does not.

Q. Then how did you make up the record of stock for the December meeting, 1901?

A. I can't answer that question now.

Q. Where did Mr. Nelson get his stock? Your meeting in December, 1900, shows that he didn't have any stock in his name.

A. He wasn't represented as a stockholder, no sir.

Q. You had the full amount of stock represented, the full thousand shares, did you?

A. Yes sir.

Q. And Mr. Nelson didn't appear in the list?

A. No sir.

Q. He does appear in 1901?

A. Yes sir.

Q. So that the state of your record is—

Mr. FLANDERS: Now just wait a minute. That is not quite a fair statement of it. Mr. Nelson's name, in anything that has been introduced in evidence here, in the meeting in 1901, only appears as one of the directors elected. There isn't anything to show that he was there as a stockholder.

Q. You testified, did you not, that before the General Paper Com-

pany commenced business, Mr. Nelson subscribed for 22½ shares of stock which was paid for by the Hennepin Paper Company? Didn't you testify to that?

A. No sir. I never did.

Q. What did you testify to about his 22½ shares?

A. I never testified to any such thing. I testified that that stock was issued in December, 1901; we commenced business some time in July, 1900.

Q. Didn't you say he had subscribed for 22½ shares of stock?

A. No sir. I don't think I did.

Q. Didn't you say he had subscribed for stock before the General Paper Company commenced business?

A. I did.

Q. How much?

A. One share.

Q. When did he surrender that?

A. I can't tell you that.

Q. Didn't you say that he also got the rest of his stock, or subscribed for it, before the General Paper Company commenced business?

A. No sir.

Q. You did not?

A. No sir, I don't think I did.

Q. Well, who did he get that stock from between 1900 and 1901?

A. I couldn't tell you that now.

Q. Haven't you any record showing it?

A. I may have, somewhere.

Q. You said there was no transfers of stock?

A. There was no stock issued.

Q. Well, I am talking about transfers of right to stock.

319 A. Well, that I couldn't answer you now.

Q. Do you pretend to say that the first stock that he ever subscribed for was at the meeting of December, 1901?

A. No sir, I don't.

Q. When did he subscribe for it?

A. June 18th he subscribed for one share.

Q. When did he subscribe for the balance?

A. Some time about that time he entered his name on the subscription list for 29 shares.

Q. That is what I thought.

A. Yes sir.

Q. That was before the General Paper Company commenced business, wasn't it?

A. I think it was.

Q. Now when did he surrender that right?

A. I have repeatedly stated that I do not know.

Q. Do you know whether he ever surrendered it or not?

A. That I couldn't say at this time.

Q. Did not the Hennepin Paper Company pay for that stock?

Mr. FLANDERS: Mr. Kellogg, he has been interrogated on both those subjects and answered several times.

Mr. KELLOGG: The record will show what he has answered.

Mr. FLANDERS: Well, that is the fact.

Q. Did not the Hennepin Paper Company send its check for that stock?

320 A. I can't answer that question at this time without my referring to the records.

Q. You think it did, don't you?

A. I couldn't say.

Q. What records do you refer to?

A. The records in Chicago.

Q. Then, you have no records now showing who the stockholders were and the amount held by them at the December annual meeting, 1901?

A. Nothing more than those records show.

Q. Do they show it?

A. I think they show everybody.

Q. Please turn to it.

Mr. Flanders hands the book to the witness, and the witness examines the same.

Q. Let me ask one or two questions here. I will withdraw the last question. Please read the minutes of the meeting of 1901 in reference to the distribution of stock, that was shown to me by Mr. Flanders.

A. There is nothing in the minutes that show any distribution of stock.

Q. Well, in reference to stock at all. You know what I refer to, don't you?

A. No sir, I do not.

Q. Was there a committee appointed at that meeting?

Mr. FLANDERS: Well, wait a minute, Mr. Kellogg. This will explain it. This is the part I showed Mr. Kellogg, and the report of this committee here. That is what I submitted to him.

321 Q. Please read it.

A. I beg your pardon; I didn't understand your question. (Reading:) "Upon motion, L. M. Alexander, seconded by B. F. Nelson, and amended, the following was duly carried: A committee of three be appointed who under legal advice shall report proper plan for the completing subscriptions and paying up in full the capital stock; such committee to report to the stockholders' meeting as soon as practicable and not later than 7 o'clock p. m."

Q. Read who the committee was.

A. (Reading:) "The chairman appointed T. E. Nash, W. Z. Stuart, E. A. Edmunds."

Q. Read the report of the committee.

A. (Reading:) "Report of committee by W. Z. Stuart as follows
Gentlemen: The committee appointed by you to consult with our
attorney and recommend course of procedure for your action, unan-
imously recommend the following: 1st. That the capital stock of
the company remain at \$100,000; 2nd. That it should be paid in
full; 3rd. That subscriptions on stock as originally made be allowed
to stand, and that such additions or sales as are equitable may now
be made; 4th. That the capital stock must remain unimpaired and
no dividends be declared from it."

Mr. FLANDERS: That is all.

Q. Is that all that pertains to the stock in any way during that
meeting? Does that complete the report?
322 A. That is not all of the report. That is all that pertains
to the stock.

Q. Well, what is the rest of the report in relation to sales of stock
or any other subject. I want the rest of the report of that com-
mittee.

Mr. FLANDERS: There is nothing more on that subject.
(Closing book and taking same from the hands of witness.)

Q. Did you read all of the report of that committee?

A. No sir.

Q. You did not?

A. No sir.

Q. Do you decline to read the rest of the report of the committee?

A. Under advice of counsel I do.

Mr. FLANDERS: Where is the record book at the present time?

WITNESS: It is in your possession.

Q. You had it when you were reading, didn't you?

A. Yes sir.

Q. Mr. Flanders took it from you when you quit reading?

A. Yes sir.

Q. How many times have you been over this with Mr. Flanders
before you came here?

A. These questions you have asked me?

Q. This testimony that you are going to give or any testimony
that you are going to give.

A. I have not been over any of the questions that you have asked
me.

Q. Never talked with him about your testimony here?
323 A. Indeed I have.

Q. How many times?

A. I don't know.

Q. Been over the records with him before you came here?

A. No sir, haven't looked at these records for several months.

Q. When the law, and the by-laws of your company require you
to keep the possession of these books, why do you part with them?

Mr. FLANDERS: Well, you needn't answer that question either.

Q. Do you decline to answer?

A. I do, under advice of counsel.

Mr. FLANDERS: Do you want to examine him for the bar?

Mr. KELLOGG: No, we don't want any such men in the bar.

Mr. FLANDERS: Well, if you have any questions of that kind to put, put them to me.

At this point the hearing was adjourned until the morning of Wednesday, May 17, 1905, at room 310 Federal building, Milwaukee, Wis.

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James G. Flanders, Volume 2.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs. }
 GENERAL PAPER COMPANY ET AL. Defendants. }

Testimony of L. M. Alexander.

Second Day, May 17, '05.

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Cross examination.....	
Re-direct examination.....	
Re-cross examination	

ROBERT S. TAYLOR,
 Special Examiner.

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WEDNESDAY, May 17, 1905.

310 Federal Building, Milwaukee, Wisconsin.

The hearing was resumed before the examiner, at the above time and place, all parties being present.

The witness L. M. ALEXANDER was recalled.

Mr. FLANDERS: Mr. Alexander suggests to me a slight correction which he wishes to make now, if you have no objection to it.

Mr. KELLOGG: All right, let him make it.

WITNESS: I stated yesterday, in reference to the question as to when this supplementary stock subscription list was made, that I thought it was before the General Paper Company began to do business, which would make it in the month of June, 1900. After

thinking over the report of that committee, I think that supplementary subscription list was made about the time of the meeting in December, 1901, to finish up the balance of the capital stock unsubscribed.

By Mr. KELLOGG:

Q. You say, after thinking over the report of the committee: You refer to that report a part of which you read last evening just on the adjournment?

A. Yes sir.

Q. After thinking that report over you think that the list of subscriptions containing 413 shares, on page 16 of the record book, was made about the time of that committee report in 1901.

A. Yes sir.

Q. Then you did not give all the committee report last night?

Mr. FLANDERS: Well, he has testified to that, at least twice. I should think that ought to be sufficient.

326 Q. You refuse to answer that question?

Mr. FLANDERS: Answer it again if he wants to know. Put it on the record the third time.

A. I did not.

Q. Then the correction of your testimony which you made is based upon the part of the report which you have not given?

A. No sir.

Q. Well, the report which you did give didn't say anything about that subscription list, did it?

A. The report that I read gave the ideas of the committee in reference to capital stock, and its completion and issuance. And I read all of the report that pertained to capital stock and its issuance.

Q. And to whom given?

A. No; the report does not state to whom given.

Q. Did you read all of the report that refers to any division of the stock or issue of the stock to particular persons?

A. There wasn't anything in the report pertaining to that.

Q. What is there in that report, then, to indicate that this subscription list of 413 shares on page 16 was made at that time.

Mr. FLANDERS: Objected to as assuming a fact not proven in the case, and something that the witness has not testified to. He has not said the report indicated anything of that kind, but he said that the report,—the portion of the report which he read has brought back to his memory the fact that this subscription was completed in December 1901.

327 A. The portion of the report which I read makes recommendation that the capital stock subscription be completed.

Q. That is all that refreshes your recollection.

A. Yes sir.

Q. Referring to this report, Mr. Alexander, it says, "that subscriptions on stock as originally made be allowed to stand, and that such additions or sales as are equitable may be now made." What did you mean by "sales as are equitable may now be made"?

Mr. FLANDERS: Mr. Alexander was not a member of that committee.

Q. What was meant by it?

A. I couldn't say, only just as the report reads.

Q. You entered it in the book.

A. Yes sir.

Q. You don't know what that meant?

A. Nothing more than the report itself states.

Q. You issued the stock under it, didn't you?

A. No sir.

Q. Who did?

A. I don't think anybody did.

Q. Haven't you issued any stock under that report?

A. No sir.

Q. Didn't you issue every share of stock that was issued?

A. Yes sir.

Q. You didn't follow that report?

A. I followed the subscription list.

Q. Well, you say that subscription list was made pursuant to that report.

328 A. I said my recollection is that the subscription list was made about the time of that report.

Q. Well, it was made pursuant to that report, wasn't it?

A. I couldn't say.

Q. What do the minutes say as to the adoption or rejection of that report?

(Mr. Flanders shows book to witness.)

A. (Reading:) "Upon motion B. F. Nelson, seconded by D. R. Davis and duly carried, the above report was unanimously adopted."

Q. Was that subscription list then made there in your presence?

A. I don't think it was.

Q. When was it made?

A. I couldn't tell you that.

Q. When did you put it in that book?

A. Some time during December 1901, I think.

Q. All the men that subscribed that list were present there, were they not?

A. I couldn't say that.

Q. Will you now say, in view of the unanimous adoption of that report that that subscription list was not made pursuant to the report?

A. I think the subscription list was secured in pursuance to that report.

Mr. FLANDERS: Now, Mr. Kellogg, will you excuse me a moment.

Mr. KELLOGG: Wait a moment:

Q. Then what did you understand by the statement that "such sales be made as should be equitable"?

329 Mr. FLANDERS: That is objected to as irrelevant and immaterial, and if you will let me suggest something I may help you a little.

Mr. KELLOGG: Well, I want the witness to answer that question first.

Mr. FLANDERS: Well, this bears on the answer of the witness.

Mr. KELLOGG: Well, let him answer it, then.

Mr. FLANDERS: Well, it is not for him to answer it.

Mr. KELLOGG: We will see about that.

Mr. FLANDERS: Well, I will make my statement, if you won't take it any other way.

Q. Will you answer my question.

Mr. FLANDERS: You need not answer until I make my statement. Now I submit to your inspection the portion of the records of this meeting which shows exactly what was done under that report. Now you can look at it or not as you wish.

Mr. KELLOGG: All right, let us see it.

Mr. Flanders submits Petitioner's Exhibit 29 to attorneys for petitioner.

Q. Will you please read from page——

Mr. FLANDERS: Well, read it yourself.

Mr. KELLOGG: No, I will have the witness read it.

Mr. FLANDERS: No, you won't have him read it (taking the book away).

Mr. KELLOGG: Will you let me see that book?

Mr. FLANDERS: No, I won't. I will let you read that into the record yourself.

330 Mr. KELLOGG: You won't have the witness read?

Mr. FLANDERS: No I won't.

Mr. KELLOGG: Please enter that. Let me take the book then, and I will read it myself.

Mr. FLANDERS: All right. If you won't take the thing when we tender it to you courteously, why you will have to get it as you can.

Mr. Flanders shows the book to Mr. Kellogg.

Mr. KELLOGG: I read from page 45 of the minutes of the meeting that you (Mr. Alexander), refer to, in relation to this report of the committee, Petitioner's Exhibit No. 29: "Upon motion B. F. Nelson, seconded by D. R. Davis, and duly carried, the above report was unanimously adopted. Upon motion, J. S. Van Nortwick, seconded by W. L. Edmunds, and unanimously carried, L. M. Alexander was added to above committee, and they were appointed and instructed

to complete the transactions necessary to cover provisions of above report. Upon motion T. E. Nash, seconded by George A. Whiting and duly carried, it was ordered that all balance to pay capital stock of \$100,000. in full, be called in."

Mr. Flanders now takes possession of the book.

Mr. KELLOGG: Please note before the counsel for the Government was allowed to read this report, the paragraphs immediately preceding it were covered up, and counsel for defendants refused to allow the Government counsel to see the contents of the paragraphs.

Mr. FLANDERS: Put a big hand right opposite that.

331 Mr. BECK: How is that?

Mr. FLANDERS: I say, put a great big hand opposite that paragraph, and better get a rubber stamp made to stamp it on every page of this record.

Q. Now, Mr. Alexander, you were added to that committee I see. You said a moment ago you were not on the committee. Have you changed your mind now?

A. If I was added—I was not on the committee that made that report.

Q. You were added to the committee to carry out the report.

A. I must have been; I didn't notice that in the record, but I must have been.

Q. Well, did you carry out that report?

A. I think we did as a committee.

Q. And distributed this stock.

A. Yes sir, we provided for its signing as shown by the list.

Q. Now will you please state your recollection as to the balance of that report that you have not read?

Mr. FLANDERS: That I object to, and I instruct the witness that he need not answer.

Q. You refuse to answer, do you, Mr. Alexander?

A. Under advice of counsel, I do.

Q. What reason do you give for refusing to answer? Is that the only reason?

Mr. FLANDERS: Well, that is a pretty good reason.

Q. Is that the only reason you give?

Mr. FLANDERS: He might tell you a story if you want to listen to it.

332 Q. Is that the only reason you desire to give, Mr. Alexander?

A. I accept that as the only reason.

Q. Do you refuse on the ground that the testimony will tend to incriminate you?

Mr. FLANDERS: You are not obliged to answer that question, and you can stand on the statement that you do it under the advice of

your counsel, and if anybody is to blame for that it is James G. Flanders.

Q. Do you refuse to answer that?

Mr. FLANDERS: You need not answer that question.

Q. You decline to answer, do you?

Mr. FLANDERS: You need not answer that question; and you needn't put words in his mouth. When he makes any such claim as that he will be able to do it himself.

Mr. KELLOGG: I desire to enter an objection to the constant interference in this examination by the counsel. I want to be courteous and am willing he should make every reasonable objection. This directing of the witness, what he shall do and what he shall not in such peremptory terms and counsel interrupting, I desire to protest against it. This witness cannot escape the responsibility by swearing it onto somebody else, as he will find out.

Mr. FLANDERS: Now you may take this down: The responsibility of a witness, who, under the advice of counsel declines to make an answer, is a question to be determined not by the distinguished counsel for the Government, but by any court to which this proceeding goes, at which time and place we hope to be present; and furthermore, the counsel has repeatedly violated the rules
333 of practice in the conduct of this examination, as I believe he knows; and as long as he continues to do so by asking questions that are clearly impertinent and improper, and not proper to be answered I shall exercise my privilege of directing the witness under my advice not to answer them.

Mr. KELLOGG: I have not asked any question that is improper or illegal. We have a right to cross-examine a hostile witness, as his evidence and attitude clearly shows he is.

Mr. FLANDERS: I move to strike out the latter clause of the counsel's statement as improper, irrelevant and immaterial and not sustained by the record.

Q. Did you as a member of that committee distribute the stock to these various parties who signed this subscription about that time?

A. I don't understand that question.

Question was read.

A. The issuance of certificates? I don't understand the question.

Q. What did your committee do?

A. Our committee, as far as my recollection goes—I don't think I was active in connection with it—but I think they secured this stock subscription which has been referred to, completing the total subscription to the capital stock of the General Paper Company.

Q. As a member of that committee did you secure any of
334 those subscriptions.

A. I don't think I did.

Q. Did you see any of those subscriptions made?

A. I couldn't say.

Q. Were they not all made at that date and at that meeting where these men were present?

A. I couldn't say; I don't think so.

Q. Were any of them made at that meeting?

A. That I couldn't say.

Q. Were the other members of the committee present at that meeting.

A. I think they were.

Q. Mr. Nelson was present?

A. I think so.

Q. Who was the other member of the committee?

A. Mr. W. Z. Stuart.

Q. Was he present?

A. I think he was.

Q. Did you have a meeting of the committee.

A. Let me see that first list, Mr. Flanders. I can't say whether we had a meeting of the committee that day or not.

Q. Did you, at any subsequent day?

A. I think we must.

Q. When?

A. I couldn't say.

Q. Did that committee make any other report?

A. None that I can recall.

Book handed Mr. Kellogg by Mr. Flanders.

Q. Do you know whether they did or not?

A. I couldn't say.

Q. Is there any record in this book of any further report of the committee to a board of directors or anybody?

(Referring to Petitioner's Exhibit 29.)

A. I don't know.

335 Q. Will you look and see?

Mr. FLANDERS: If you can find any other report of that committee please do so and submit it to me. (Handing witness Petitioner's Exhibit 29.)

Witness occupies some minutes in examining the book.

WITNESS: I can find nothing on the record.

Q. Are you willing to state that there is nothing in that record in any other place referring to any report of this committee?

A. I think so.

Q. You swear positively that is true, do you?

A. To the best of my ability to see, I think there is nothing there.

Mr. KELLOGG: We request the privilege of examining the book to

see whether there is anything in the book referring to the report of this committee.

Mr. FLANDERS: Request respectfully declined.

Q. You decline to let us take the book for that purpose, do you, Mr. Alexander?

Mr. FLANDERS: Well, Mr. Alexander, I suppose you understand this book is in my possession. If the request is addressed to you, why if you have got control over that book, that is one matter.

Q. Do you decline to let us take that book for that purpose, Mr. Alexander?

Mr. FLANDERS: You need not answer that question, Mr. Alexander. The book is in my possession, as the counsel for the General Paper Company, and I decline the request.

336 Q. You had the book a moment ago, did you not?

A. Yes sir.

By Mr. FLANDERS:

Q. You got that book from me, did you not?

A. Yes sir.

Q. And at my request, and in answer to the request of the counsel you made an examination to find whether there was any further report from this committee, did you not?

A. Yes sir.

Q. And then handed it back to me.

A. Yes sir.

By Mr. KELLOGG: Now you say you think the committee must have had a meeting, do you, Mr. Alexander?

A. Yes sir, I think they must have had a meeting.

Q. And you were present at that meeting?

A. I think I must have been.

Q. What was discussed at that meeting?

A. I don't recall what was discussed, excepting to carry out the provisions of the report.

Q. How did you carry out the provisions of the report?

A. By securing the additional stock list subscription.

Q. Whom did you ask to subscribe?

A. I think the stock list is the best evidence.

Q. Did you ask the persons whose names appear on that stock list to subscribe?

A. They must have been asked.

Q. Did you ask them, or did the other members of the committee ask them.

337 A. I think the other members of the committee. I have already stated that I was not active on that part of the work.

Q. Did the committee ask them to subscribe for the shares of stock in the amounts therein stated?

A. I couldn't say as to that.

- Q. Did you have any discussion of that subject with the committee?
A. I don't remember.
Q. Do you swear that you had no such discussion?
A. I don't remember.
Q. You remember no discussion about the subject whatever?
A. About the subject of the subscription list?
Q. Yes sir.
A. I have a recollection about the subscription list.
Q. What was the discussion?
A. I don't remember the substance of it.
Q. You have no recollection of the substance of the discussion?
A. Nothing more than securing the additional subscribers.
Q. You have no recollection of any one subscriber signing at your request or at the request of any other member of the committee?
A. No sir.
Q. How did you happen to sign for thirty shares?
A. I have already stated that was signed by my business associate, Mr. Garrison.
Q. When was it signed?
A. I couldn't give you the dates he signed.
Q. You have no recollection of when he signed it?

338 Mr. FLANDERS: You have been all over that, Mr. Kellogg.

- A. No sir.
Q. Did he sign it with your previous knowledge and approval?
A. I think so.
Q. When was it given?
A. I couldn't tell you that; I couldn't tell you the date.
Q. How was the amount determined?
A. I think it was determined at his discretion. I gave him discretion to subscribe for what he wanted.
Q. And the committee gave him right to subscribe for all he desired?
A. I couldn't say as to what the committee did.
Q. Was the amount of that subscription discussed by you with anybody, at any time?
A. I don't remember.
Q. You have no knowledge of how Mr. Garrison came to subscribe for thirty shares?
A. No, I don't remember.
Q. Have you any knowledge as to how any one of these men came to subscribe for the amount therein stated?
A. No, I haven't any recollection of just why they subscribed for those amounts.
Q. You have no recollection of any discussion that ever took place at any meeting of the committee or with any members of the committee as to how this stock should be apportioned?
A. In connection with this report?

Mr. KELLOGG: Please read that question. I think you will understand it.

WITNESS: I hope so.

The question was read.

339 Mr. FLANDERS: Now wait just a minute. I wish to enter an objection upon the record to the manner and tone of the counsel in the examination of this witness. I admit that he is an adverse party, or an officer of one of the adverse parties, and that greater liberty is permitted to the counsel in his examination than if the fact were otherwise. But I protest against the manner in which the witness is being treated by the counsel both in his tone and manner and the style and form of his questions; and I insist there is nothing in the record which warrants the counsel in assuming such an attitude toward this witness and that there is nothing in the record that tends to show that this witness has not answered fully and truthfully and frankly the questions that have been put to him.

Mr. KELLOGG: Please read the question, will you, Mr. Examiner. The question was repeated.

A. No sir, I have no recollection.

Q. You never discussed it with any member of this committee.

A. I don't remember; I have no recollection.

Q. Was there any discussion at the meeting of the board of directors or stockholders in the month of December, 1901 about the issuance of this stock to any of these parties?

A. I have no recollection of any.

Q. Will you swear that there was no discussion by any of the directors at that meeting at which that committee was appointed as to the sale or distribution or subscription for the additional stock to complete the list?

A. I say that I have no recollection of any such discussion.

Q. At that meeting, or at any other meeting.

A. At that meeting or at any meeting of the committee.

Q. Did you have any such discussion at any other place with any other of the officers of any of these defendants?

A. I do not remember.

Q. Did you ever discuss it with anybody?

A. Yes, I think I have.

Q. With whom?

A. I don't remember.

Q. Then you simply issued this stock on that subscription list; that is true, is it?

A. Yes sir.

Q. You have no knowledge of how that subscription list came to be made.

A. As a member of the committee, I have some knowledge of how it came to be made.

Q. Please state what that knowledge is.

A. That the stock was secured to complete the list, and the subscription list itself is evidence of what was done.

Q. Who secured it?

A. I couldn't say.

Q. When was it secured?

A. I can't state that.

Q. When did you get that list?

A. Some time in the month of December.

Q. Who gave it to you?

A. I can't state that.

Mr. KELLOGG (to Mr. Flanders): Let me see the signatures.

Mr. Flanders hands the book to Mr. Kellogg.

Q. Do you know Mr. Nash's handwriting?

A. I do.

Q. Is that his handwriting (showing witness book).

341 A. Yes sir.

Q. Do you know Mr. Van Nortwick's handwriting?

A. Yes sir.

Q. Is that his handwriting?

A. Yes sir.

Q. Do you know Mr. Garrison's handwriting?

A. I do.

Q. Is that his handwriting?

A. Yes sir.

Q. Mr. Garrison also wrote your name?

A. Yes sir.

Q. Do you know Mr. Daly's handwriting?

A. Yes sir.

Q. Is that his handwriting?

A. No sir.

Q. Whose is it?

A. It is signed by "E. T. H.," Mr. E. T. Harmon.

Q. Do you know Mr. Pride's handwriting?

A. Yes sir.

Q. Is that his?

A. Yes sir.

Q. W. L. Edmunds'?

A. Yes sir.

Q. Is that his handwriting?

A. Yes sir.

Q. D. R. Davis'?

A. Yes sir.

Q. Is not the handwriting of the rest of the list the handwriting of the person whose name is subscribed?

A. Yes sir.

Mr. KELLOGG: I was showing the witness the subscription list containing 413 shares on page 16 of Petitioner's Exhibit 29.

Q. Whose handwriting is the total added up in the figures?

A. It is mine.

Q. Whose handwriting are the figures, the totals on that page, page 17?

A. Mine.

Q. When did you do that?

342 Mr. FLANDERS: Do what?

Mr. KELLOGG: Make those figures.

Mr. FLANDERS: Those tables?

A. I made them some time during the month of January.

Q. When did you put that leaf in the record book here as a part of the record?

A. I don't recall the exact date, sometime in December 1901.

Q. Where did that leaf come from?

A. I don't recollect how it came into my possession.

Q. You never saw it until these men handed it to you.

Mr. FLANDERS: Well, he hasn't said that.

Q. Well, is that true?

Mr. FLANDERS: Now I object to the question. I will make the objection.

Q. Did you ever see it?

Mr. FLANDERS: Now just wait a moment until I get my objection down.

Q. Did you ever see it?

Mr. FLANDERS: I object to the foregoing question which reads as follows:

The following question was read to Mr. Flanders:

"You never saw it until those men handed it to you."

Mr. FLANDERS: I object to the question reading

"You never saw it until these men handed it to you," as assuming something that the witness has not testified to and as improper; and I respectfully request the counsel upon the other side to permit me to interpose my objection before he proceeds with another question.

343 Q. Did you ever see it before these gentlemen handed it to you, completed?

A. I think not.

Q. You were present during all of the meeting of the board of directors that you have referred to and the stockholders in December 1901?

A. Yes sir.

Q. Was that leaf which you have put in the record book handed in at any subsequent meeting of the board of directors or at any meeting of the board of directors or stockholders?

A. I think not.

Q. Where did you get your authority to insert it in the book?

A. As the committee were appointed to secure the subscription list and complete it, and I was made a member of that committee and this completed the list, I considered that was authority to place it there with the rest of the subscriptions.

Q. But you have no knowledge of how the committee apportioned that stock between the various parties, as appears by that list?

A. I have no recollection of there being an apportionment.

Q. You think it was presented, and each man was allowed to subscribe for whatever he desired?

A. I think so, practically, yes sir.

Q. What do you mean by "practically"?

A. Well, I will omit the word. I should think so, yes sir.

Q. There were just 413 more shares of the company, were there?

A. Yes, sir.

Q. Now as a matter of fact, hadn't you voted the full stock, the full amount of 1000 shares of stock, the full amount of the
344 stock of the company, at a previous meeting of the stockholders?

Mr. FLANDERS: Now wait a minute.

Mr. KELLOGG: I don't mean you personally voted, but had there not been voted?

Mr. FLANDERS: Now just wait a minute, Mr. Kellogg. You needn't answer that question until I get through. That is objected to as irrelevant, incompetent and immaterial.

A. Yes sir.

Mr. KELLOGG: Let me take the meeting where that list is given.

Mr. FLANDERS: You have got it in your transcript. I will find it for you. Still you have got it there. Here it is, Mr. Kellogg. (Handing Mr. Kellogg book.)

Q. At the stockholders' meeting of December 11th, 1900, which you gave yesterday, the full amount of stock, with the exception of 47 shares, 18 of which shares were previously subscribed for by A. M. Pride, one share by H. M. Frenck, and 28 shares, treasury, were voted, were they not?

A. Yes sir.

Q. Where did the 413 shares come from that were subsequently subscribed, if all the stock voted at previous meetings?

A. The basis of voting that stock is upon the agreement of a previous meeting of the General Paper Company stockholders or directors, I am not sure which.

Q. Where is it?

A. I think it is under date of June 18th of that record.

345 Q. Please turn to the agreement.

Mr. Flanders hands the record to witness.

Mr. FLANDERS: Find the place and show it to me.

Witness points in book and hands book to Mr. Flanders. Mr. Flanders covers up a portion of the page and submits the balance of the page to the inspection of Mr. Kellogg.

Mr. KELLOGG: Just hand it to the witness, if you don't want me to see it.

Mr. FLANDERS: I haven't any objection to the portion I submit to you.

Q. Have you before you the agreement that you refer to, adopted at a directors' meeting in relation to voting this stock?

A. I refer to the list of stock as voted at the directors' meeting under date of June 18th, 1900, page 27, showing in detail the number of shares each one agreed to take, and state that my recollection is all stockholders' meetings were based on that as nearly as practicable until the final completion of the stock list by subscriptions,—actual subscriptions.

Q. Now read that resolution which you claim gives you that basis or right to receive the votes of these various men for that stock; that is now before you?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and assuming something which the witness has not testified to. He has not made any claim that was his, that he received the votes on the strength of that, and he says his recollection is
346 that that list was used as a basis for voting.

Q. You refer to the resolution on page 70.

Mr. FLANDERS: There isn't any resolution on page 70 that has been offered. 27.

Mr. KELLOGG: Page 27 I mean instead of 70.

Q. Please read it.

Mr. FLANDERS: Read the part you refer to, Mr. Alexander.

A. (Reading:) "Upon motion duly seconded and carried, it was ordered that the roll of directors be called and ascertain which of directors and stockholders present would go on and total shares of stock taken, and close contracts for completing the organization. Roll call resulted as follows."

Q. Wait just a moment. You needn't read the roll call. The list was read yesterday, was it?

A. Yes sir.

Mr. Flanders takes the book from the witness.

Q. Now wait a moment. I am not through with the examination. Will you please leave the book there, I want to ask him some more questions.

Mr. FLANDERS: Certainly, with the greatest pleasure. (Returning book to the witness.)

Q. Now what do you mean by "close contracts"?

A. I can't explain it. I don't recall what was meant by it at the time.

Q. Didn't it mean close contracts with the mills for agencies?

A. I couldn't say.

Q. You have no knowledge of what that means?

A. I couldn't say.

347 Q. Is there anything following that that explains it?

Mr. FLANDERS: If there is, submit it to me.

Q. At the bottom of that page is not the subject of the contracts referred to?

Witness hands the book to Mr. Flanders.

Mr. FLANDERS: I now submit to counsel upon the other side the portions of the—well, I will ask you, Mr. Alexander, if the part that you consider refers to this matter again is at the foot of page 27, the 4th line from the bottom, and continues down through the 10th line of page 28; is that your understanding of it?

A. The matter which—

Mr. FLANDERS: Counsel has asked you about, in relation to contracts.

WITNESS: Yes sir.

Mr. FLANDERS: I now submit this portion to counsel upon the other side. (Exhibiting same to Mr. Kellogg.)

Mr. KELLOGG: I suggest that it would be a good plan for the examiner to get more paper for Mr. Flanders to cover up his record with.

Mr. FLANDERS: That is a very good suggestion, one of the most amusing you have made.

Mr. KELLOGG: Now what do you submit to me?

Mr. FLANDERS: The last four lines of page 27 and the first ten lines of page 28.

Q. Please read the last four lines of page 27 and the first ten lines of page 28 which has been exhibited to us by the counsel.

348 Mr. FLANDERS: Well, perhaps you would be satisfied to have me read it or read it yourself.

Mr. KELLOGG: Well, go ahead and read it if you desire.

Mr. FLANDERS: All right. (Reading:) "The question of contracts with various mills came up and as it was claimed by some that certain mills were partly contracted for their production, on which a commission was already being paid, it was ordered upon motion of John Daly, duly seconded and carried, that the question of commission on all paper now contracted be left to the executive committee, and upon motion of B. F. Nelson, duly carried, it was ordered that the executive committee make the best terms possible on such contracted paper for handling it during the year."

Q. What action was taken on that motion, Mr. Alexander?

Mr. FLANDERS: Well, I should think it stated itself, here. But

if you want to look it over again, it was ordered, it says here ; the portion that I read says it was ordered.

Q. On the same page, 28, is there not recorded some action of this executive committee?

Mr. FLANDERS: On that subject? (handing the book to the witness.)

Q. On that subject.

A. No sir.

Q. Now you know what "close contracts" for completing the organization means, don't you?

A. No sir.

349 Q. You don't know what that meant.

A. I don't recall what it referred to.

Q. In the resolution preceding the names of these men, in which it states, "Upon motion duly seconded and carried it was ordered that the roll of directors be called and ascertain which of the directors and stockholders present would go on, and total shares of stock taken, and close contracts for completing the organization." Then follows the action which you have just read in relation to contracts. Didn't the contracts refer to those contracts with the mills for selling their product?

A. They might have.

Q. Do you know whether it did or not?

A. I couldn't say.

Q. You have no knowledge?

A. I couldn't say.

Q. What is your best recollection?

A. My best recollection is that I couldn't say.

Q. As one of the principal organizers of this company, instigators of this scheme, the secretary of this company, you don't know what that resolution meant?

Mr. FLANDERS: Now just wait a minute. Objected to as assuming facts not shown in the case, assuming testimony not given by the witness, and as untrue in fact, and as irrelevant, incompetent, immaterial and as improperly framed, for reasons hereinbefore stated.

Q. You have declined to answer the question?

Mr. FLANDERS: Well, he has not declined.

Q. Please answer the question.

Mr. FLANDERS: Don't be in too great a hurry.

Mr. KELLOGG: Oh, we can stay here all summer.

350 A. Not as one of the members of the organization of this company nor as any instigator of any combination referred to. To the best of my recollection, I do not recall what that particularly refers to.

Q. Do you know of any other contracts that it could refer to?

A. I couldn't say; I don't recollect now.

Q. Turn to page 28 of that record. Is there not a list or a partial list of the stockholders on that page?

A. Yes sir.

Q. Of this company, the General Paper Company?

A. Yes sir.

Q. With the list of stock?

A. No sir.

Q. Will you please read that list.

Mr. FLANDERS: Let me see it.

Witness hands the book to Mr. Flanders.

Mr. FLANDERS: Do you want to see it?

Mr. KELLOGG: Yes.

After covering up a portion of the pages, Mr. Flanders submits the book to the inspection of Mr. Kellogg.

Mr. KELLOGG: I wish the examiner would note what part of the record is shown the counsel, and that the rest is covered up.

Mr. FLANDERS: I respectfully request the examiner, when he gets that additional supply of paper, to get that rubber stamp that I have asked him to, and if the Government is too poor to pay for it, I will pay for it.

Q. Please read the balance of the minutes on page 28 showing the election of the executive committee.

Mr. FLANDERS: Well, perhaps you can have me read it, or read it yourself.

Mr. KELLOGG: You may read it or I will read it.

Mr. FLANDERS: Just as you prefer.

Mr. KELLOGG (reading): "Upon motion duly carried it was ordered to proceed to the election of executive committee and that such election be by ballot. Edmunds appointed teller. First informal ballot resulted as follows: Total cast 12. Then follows a list with the figures opposite, as follows: T. E. Nash received 12, C. A. Babcock 9, W. Z. Stuart 3, F. Garrison 12, D. R. Davis 12, John Van Nortwick 7, C. W. Howard 12, E. A. Edmunds 4, W. H. Brokaw 8, B. F. Nelson 9, D. Reese 5, George A. Whiting 3. First formal ballot resulted as follows: 12 cast. C. A. Babcock 12, T. E. Nash 12, F. Garrison 12, E. A. Edmunds 12, D. R. Davis 12, C. W. Howard 12, John Van Nortwick 11, B. F. Nelson 8. Scattering 5."

Q. Is there anything further on that page in relation to that subject at all?

Mr. FLANDERS: There is not.

Mr. Flanders takes the list.

Mr. KELLOGG: Let me take the list, and I will ask him some questions about it.

Mr. FLANDERS: You have just called it over.

Mr. KELLOGG: Well, I can't remember each one of them.

Mr. FLANDERS: Well, I will show it to you.

352 Mr. KELLOGG: Just hand the book to the witness and let him state with which company each one was connected, and in what capacity.

Mr. FLANDERS (handing book to the witness): That has been all gone over, Mr. Kellogg. Of course, follow your own course if you want to.

Mr. KELLOGG: At that time. Please state.

Mr. FLANDERS: This is the first meeting, June 18, 1900. Go ahead.

A. C. A. Babcock, connected with the Wisconsin River Paper & Pulp Company.

Q. What capacity? Please state the capacity wherever you can.

A. I think he is secretary or treasurer.

Mr. FLANDERS: You are now asking him about the time of that meeting?

Mr. KELLOGG: Yes.

Mr. FLANDERS: You mean, he was secretary then?

Mr. KELLOGG: Yes.

Mr. FLANDERS: You said he is secretary.

WITNESS: I think he was. T. E. Nash was president of the Ne-koosa Paper Company. F. Garrison was president of the Centralia Pulp & Water Power Company; E. A. Edmonds, I think was secretary or treasurer of the Falls Manufacturing Company; D. R. Davis was president of the Dells Paper & Pulp Company; C. W. Howard, I think, was president of the C. W. Howard Company; John Van Nortwick, I think, was vice-president of the Combined Locks Paper Company; B. F. Nelson, I think, was president of the Hennepin Paper Company.

358 Q. Have you the contracts that were entered into between the General Paper Company and the various mills?

Mr. FLANDERS: Counsel for the General Paper Company has the contracts. Do you wish to see them?

Mr. KELLOGG: Yes sir.

Mr. FLANDERS (handing package of papers to witness): Please find them, Mr. Alexander, and pass them over to me.

Witness opens package of papers, and hands same to Mr. Flanders.

Mr. KELLOGG: I would like the first fourteen or sixteen (whatever it was) which were entered into, which he testified about yesterday.

Mr. FLANDERS: We now submit to you the contract between the Kimberly & Clark Company and the General Paper Company, bearing date July 5, 1900. (Handing paper to Mr. Kellogg.) We also submit to you a contract—

Mr. BECK: Would you mind telling us what paper it is you do not hand over?

Mr. FLANDERS: On general principles, yes. Perhaps I will hand you these by and by. I also submit to you the contract between

the Kimberly and Clark Company and the General Paper Company bearing date December 10, 1904; and the paper which I did not hand over to you is a certificate of the vote of the board of directors of the corporation authorizing the execution of the first contract.

Mr. BECK: The vote of the Kimberly and Clark Company?

Mr. FLANDERS: Yes;—which I also submit to you.

Now I may say something to you if you care to hear it; it may help you a little. As I understand it—I wouldn't want to be
354 absolute in regard to it—but as I understand these contracts are all in the same form. If there is any variation in them it is verbal or clerical, like the use of the word "its" if it is a corporation, and "his" if it is an individual.

Mr. KELLOGG: I would like to have you, if you can, give us all the contracts that are dated the 5th of July, 1900,—the first fourteen contracts.

Mr. FLANDERS: You don't care for the contracts of December, 1904,—or do you?

Mr. BECK: No; we want the first fourteen contracts.

Mr. KELLOGG: You might keep them together, if you desire.

Mr. FLANDERS: Now, Mr. Alexander, is there a place here which would show the first fourteen mills or the first seventeen mills, or can you call them off?

Mr. KELLOGG: He did, yesterday, call off the first fourteen.

WITNESS: I can, if you will permit me to.

Mr. FLANDERS: Very well; separate them out.

WITNESS: This is the Atlas Paper Company. (Handing paper to Mr. Kellogg.)

Mr. FLANDERS: We haven't the slightest objection to counsel upon the other side examining any papers we have that we submit
355 for inspection. We feel they would be absolutely safe and returned to us. My objection has only gone to certain things that I did not think it proper to submit. Now I would just as soon turn these papers over to someone and it would perhaps save time and subserve everybody's convenience; but before I do that I would like to ask Mr. Alexander a question as to the forms of the contracts.

By Mr. FLANDERS:

Q. Mr. Alexander, what is the fact as to whether or not these contracts between the General Paper Company and the different mills are in substantially the same form in every instance.

A. I think they are.

Mr. KELLOGG: Let me see the first eighteen.

Mr. FLANDERS: You don't care for the formal resolution in each instance?

Mr. KELLOGG: Yes, I would like to see that.

Mr. BECK: And we would also like to see the renewal contract.

Mr. FLANDERS: There is the original of the Combined Locks

Paper Company, and the renewal. (Handing papers to Mr. Kellogg.)

WITNESS: Would you permit a suggestion?

MR. FLANDERS: Yes.

WITNESS: That these little odds and ends be kept separate, and just let them take the wrappers and put such as they want right in.

MR. KELLOGG: I want the resolution in each case.

356 MR. FLANDERS: I don't know whether this suggestion meets your views or not, but I think I will be prepared to admit, if it would meet your views, that in each instance this contract was duly authorized by the underlying mill and by the General Paper Company and executed in accordance with due authority.

MR. KELLOGG: I want the resolution, because it shows the date of the resolution—each one—and the parties.

MR. FLANDERS: All right.

By Mr. KELLOGG:

Q. This meeting of June 18th was held where, Mr. Alexander? Appleton, Wisconsin, wasn't it?

A. I think so.

Q. That is the meeting that we have been discussing and have put in evidence here?

A. I think so, yes sir.

MR. FLANDERS: There is the resolution of the Combined Locks Paper Company. That is the original, I think. (Handing paper to Mr. Kellogg.) I don't find any resolution for the second. Also the contract between the General Paper Company and the C. W. Howard Company, executed July 5, 1900, and the authority for its execution. (Handing same to Mr. Kellogg.) Also the contract between the General Paper Company and the C. W. Howard Company, bearing date December 14, 1904. (Handing same to Mr. Kellogg.)

After some informal discussion, this matter was passed for the present, the contracts to be sorted out by some competent
357 person during the noon recess.

Q. Now, referring to this committee which was appointed and acted during the month of December, 1901, as I understood you in substance, you stated that the stock of the company had been voted at that meeting and previous to that meeting pursuant to this arrangement or agreement which you read in evidence, adopted at the meeting June 18, 1900?

A. Yes sir, that is my recollection of the matter.

Q. Now that meeting purported to contain the list of all the stockholders and the amount of stock held by each (the meeting of June 18, 1900) did it not?

A. No sir, I don't think it purported to give what they agreed to take—would subscribe for and take.

Mr. KELLOGG: It reads, "The roll of directors be called, and ascertain which of the directors and stockholders present would go on, total shares of stock taken." That is, you mean that all the shares had been taken as shown in that list which you gave yesterday on page 59 of your testimony. (Showing witness record of yesterday's testimony.) I refer to that page because it saves going back to the records, Mr. Flanders.

Mr. FLANDERS: That is all right.

A. Yes sir.

Q. So that that meeting shows that every share of stock had been taken, does it not?

A. It shows that every share of stock up to 1000 would be taken.

358 Q. Well, it was voted at that stockholders' meeting, wasn't it?

A. As if taken?

Q. Yes sir.

A. I think that was used as the basis for action at the stockholders' meeting.

Q. And at subsequent stockholders' meetings all of the 1000 shares (I mean subsequent stockholders' meetings prior to December 1901), all of the shares of stock were voted?

A. I think so.

Q. Now will you tell me whose stock was turned over, released or surrendered to the parties contained in the list obtained by this committee in December 1901.

A. I think that was provided for in that part of the report of the committee that I read.

Q. Please read it and show us where it is provided for.

Mr. Flanders hands witness Petitioner's Exhibit 29.

A. On page 45, third clause of the report of the committee, "That subscriptions on stock, as originally made be allowed to stand, and that such additions or sales as are equitable may now be made."

(Handing the book back to Mr. Flanders.)

Q. Now you mean as the stock was originally taken by these parties, this company voted that sales be made to these other parties coming in; is that what you mean?

Mr. FLANDERS: Now wait a minute. He has not said anything of that kind, and I object to that question as assuming a fact
359 not stated in the case and testimony not given by the witness.

Q. Well, what do you mean?

A. I mean the original stock subscription list upon which the company based its organization.

Q. You mean that that should be allowed to stand.

Mr. FLANDERS: Well, that is what the report says.

WITNESS: That is what the report, in my judgment, refers to.

Q. Now what does this mean, "And that such additions and sales as are equitable may now be made?"

A. I think that has reference to the difference between the number of shares originally subscribed for and the 1000 shares as required to complete the subscription list.

Q. But you said that it had all been fully subscribed for.

Mr. FLANDERS: Oh no, you are mistaken, Mr. Kellogg; he didn't say that.

Q. What did you mean by "fully taken"? All taken?

Mr. FLANDERS: He didn't say that.

Q. Well, we will turn back to this and see what he did say.

The following was read by the examiner:

"Q. So that that meeting shows that every share of stock had been taken, does it not?"

"A. It shows that every share of stock up to 1000 would be taken.

"Q. Well, it was voted at that meeting, wasn't it?"

"A. As if taken?"

"Q. Yes sir.

"A. I think that was used as the basis for action at the stockholders' meeting.

360 "Q. And at subsequent stockholders' meetings all of the 1000 shares (I mean subsequent stockholders' meetings prior to December 1901), all of the shares of stock were voted?"

"A. I think so."

Q. Referring to the meeting of June 18th where the roll of stockholders was called, this language is used: "And total shares of stock taken." What did that mean?

A. I think I have already testified.

Q. Well, testify to it again, will you?

A. That it would be taken. There was no subscription list excepting the two ever made by actual subscribers to the stock of the General Paper Company than those now in the book.

Q. But it would be, do you mean? You mean that means that it would be taken.

A. Yes sir, I think so.

Q. Now how could they vote on stock which hadn't been taken or subscribed for but which would be taken subsequently?

Mr. FLANDERS: You needn't answer that question either. That is a question of law.

Q. Did you allow them to vote on stock that hadn't been taken Mr. Alexander?

No response.

Q. You decline to answer the question?

Mr. FLANDERS: Well, it is an improper question. He hadn't anything to do with allowing or disallowing it.

Q. Well, did they vote on stock that had not been taken?

Mr. FLANDERS: That is another question.

A. We voted as the records show.

361 Q. Did they vote on stock that hadn't been taken? Will you please answer that question?

A. I have no other answer except what the records state.

Q. Now turning over to the meeting of December, you say that it provided that "subscriptions on stock as originally made be allowed to stand."

Mr. FLANDERS: That is what the report says.

Q. "And that such additions or sales as are equitable may now be made."

The whole question was read.

Q. Now what did you mean by, "additions and sales" as are equitable may now be made?"

Mr. FLANDERS: Well, now, add to that question, "you say in your report," or "it is said in the report," because he has not said anything about that.

Q. Well, in the report it so says. Now what did you mean by that?

Mr. FLANDERS: I object to that as irrelevant, incompetent and immaterial. This report is not even signed by this witness and it is impossible for him to tell any more than it is for the counsel to tell what three other men meant by a report that they signed, and he is not obliged to do it.

Mr. KELLOGG: This witness carried it out and was added to the committee and carried out that report.

Mr. FLANDERS: Well, you can read the report yourself and tell what it means.

Mr. KELLOGG: I ask the witness to state what——

Mr. FLANDERS: Well, he needn't do it.

362 Q. You refuse to answer?

A. Under advice of counsel I do, *yes, sir*.

Mr. FLANDERS: You needn't tell what somebody else meant.

Q. You were added to the committee, were you?

A. Yes sir.

Q. You carried out this report, assisted in doing so, did you?

A. I think so, to some extent.

Q. Now what was the "equitable" plan carried out by you?

A. The only plan that was carried out that I know of is the stock subscription list that appears in the book.

Q. You know, don't you, that stock which somebody else had agreed to take was subscribed for by these parties appearing on that list, don't you?

A. I couldn't say.

Q. Well, where did that 413 shares come from?

A. That was the difference between the original subscription and the 1000 shares.

Q. But you have said that parties had agreed to take all the stock.

Mr. FLANDERS: No, he hasn't said that at all. I object to the counsel putting in the lips of the witness testimony which he has not given.

Q. Well, will you now state positively what the meeting of June 18th, 1900 meant where the roll of stock was called and where it said the shares taken were stated? Now what did that mean?

363 Mr. FLANDERS: I believe you are not obliged to interpret the English language to the counsel, or the minutes of this meeting.

Q. Do you refuse to state what that meant?

A. Under the advice of counsel I refuse to state further than what the record itself says.

Q. When those 413 shares had been subscribed for, was it stock that had been previously agreed to be taken by anyone else?

A. I couldn't say.

Q. You don't know anything about it? Very well. Before that time had there been any payment on stock.

A. Yes sir.

Q. Get the books and show what payments had been made and by whom they were made.

Mr. FLANDERS: The books are here aren't they, Mr. Alexander?

WITNESS: I think so; I haven't seen them but I expect they are here.

Mr. FLANDERS: To save any misunderstanding, I invite the attention of the distinguished counsel to the fact that my name appears on the outside of these books, James G. Flanders. They are legally and technically and actually in my possession. Now open the package, Herbert.

Package opened by Mr. Flanders' assistant.

Mr. FLANDERS: I might say to you, Mr. Kellogg, that these books were brought up from Chicago last night, according to your request, and as soon as you can get through with them we would like to have you do it so we can send them back.

364 Mr. KELLOGG: We will get through with them as soon as possible.

Mr. FLANDERS: Which book do you want, Mr. Alexander?

WITNESS: I don't know; I suppose I will have to have them all.

Mr. FLANDERS: Well, bring them over here, Herbert.

(Four books are now before the witness.) Perhaps Mr. Kellogg will be satisfied with the ledger account, if there is one, that shows the names of the mills and the amounts and dates.

Mr. KELLOGG: Possibly, when I see it.

Mr. FLANDERS: If you have such an account let Mr. Kellogg see it. That may shorten the examination.

WITNESS: There must be another book.
The last question was withdrawn.

Q. Please state when the first payment of stock was made and the amount.

Question was withdrawn.

Q. Please state when the first payments on stock were made, the number of shares paid on, and how much was paid on each share, total number of shares paid on.

Mr. FLANDERS: Suppose you separate that question.

Mr. KELLOGG: And let him take one part at a time.

Q. How many shares were paid on, on the dates of the first payment, on the stock?

A. (Referring to the books.) I will have to figure it out.

Q. Yes, figure it out.

365 A. There is no journal here that shows any entries for that, unless there is a cross entry on the ledger.

Q. Where is the journal entry of those stock transactions?

A. I don't see any journal here that shows that.

Q. Well, there is a journal, isn't there?

A. Well, I think so; I think it is entered on the journal, unless there is a cross entry.

Q. Will you please find out today noon about that journal, and see if you can get it.

A. Yes.

Mr. FLANDERS: Of course, you understand it is in Chicago.

Mr. KELLOGG: Yes, I understand. If you can find out by telephone, let us know at two o'clock.

Q. Well, what books have you brought here, so we can identify them?

A. Well, they are all numbered.

Q. What are they? Two cash books?

A. There is Ledger No. 1.

Mr. OLDS: Covering what period?

Mr. FLANDERS: Well, it is Ledger No. 1.

Q. Go ahead, what else?

A. Ledger No. 3, General Ledger No. 7, L to Z. General Ledger No. 10, L to Z; Journal No. 2.

Q. Well, that is marked cash book, isn't it?

A. These are cash books.

Q. Three cash books?

A. I think it is Cash Book No. 1, Cash Book No. 2 and I don't know what the other number would be.

Q. And another cash book.

366

A. Yes sir.

Q. Now you have some journals that you haven't got here.

A. Journal No. 1 I think would be the—Journal No. 1.

Q. And the Journal No. 1 shows the account of all this stock?

A. Why, it should show the entries of the charge to each of the stockholders, and the credit to capital stock account, if the entry was made.

Q. That is the one we want. Are there any other books than that journal which you have not produced which contain any entries whatever in relation to this stock or the payment therefor?

A. I couldn't say; I think not.

Q. Will you find out between now and two o'clock?

Mr. FLANDERS: Well, he can't do that, Mr. Kellogg, not in that broad way in which you put that question.

Q. Well, find out what you can about it.

Mr. FLANDERS: There isn't any living human being who could do that. Now let us find out—what you are trying to get, as I understand it, are the books that will show the amount paid on the capital stock, and when paid?

Mr. KELLOGG: And by whom paid.

Mr. FLANDERS: And by whom paid.

Mr. KELLOGG: Yes sir, and the manner paid, whether by check or cash.

Mr. FLANDERS: Now, Mr. Alexander, you see what you can do by telephone on that subject. Mr. Alexander to my knowl-
367 edge is a sick man and has been for some time. Now if you can't do it so as to get your lunch regularly, you will have to take longer time. I suppose these gentlemen won't object to that.

Mr. BECK: Certainly not.

A recess was here taken until two o'clock p. m.

Afternoon session.—The witness was recalled and his direct examination resumed by Mr. Kellogg.

The petitioner offered in evidence the following exhibits:

Petitioner's Exhibit 30, being contract between the General Paper Company and Kimberly & Clark Company, dated July 5, 1900;

Petitioner's Exhibit 31, being resolution of the board of directors of the Kimberly & Clark Company, dated June 18, 1900;

Petitioner's Exhibit 32, being agreement between the General Paper Company and the Kimberly & Clark Company, dated the 10th day of December, 1904;

Petitioner's Exhibit 33, being resolution of the board of directors of the Kimberly & Clark Company, authorizing etc. the latter contract;

Petitioner's Exhibit 34, being agreement between the General Paper Company and the Atlas Paper Company, dated July 5, 1900;

Petitioner's Exhibit 35, being resolution authorizing agreement last named.

368 Petitioner's Exhibit 36, being another contract between the same parties, dated 10th of December, 1904.

Petitioner's Exhibit 37, being contract between General Paper Company and the Combined Locks Paper Company, dated July 5, 1900;

Petitioner's Exhibit 38, being the resolution of the board of directors of the Combined Locks Paper Company;

Petitioner's Exhibit 39, being contract between the same parties last named, dated the 5th day of May, 1905.

Petitioner's Exhibit 40, contract between the General Paper Company and the C. W. Howard Company, dated 5th day of July, 1900;

Petitioner's Exhibit 41, being resolution of the board of directors, authorizing the same;

Petitioner's Exhibit 42, being contract between the same parties, dated 14th day of December, 1904;

Petitioner's Exhibit 43, contract between the General Paper Company and the John Edwards Manufacturing Company, dated July 5, 1900;

Petitioner's Exhibit 44, being resolution of the board of directors of last named company, dated June 15, 1900, authorizing the same;

Petitioner's Exhibit 45, being contract between the same parties, dated December 13, 1904;

Petitioner's Exhibit 46, being resolution authorizing the same;

369 Petitioner's Exhibit 47, contract between the General Paper Company and the Nekoosa Paper Company, dated July 5, 1900;

Petitioner's Exhibit 48, resolution of the board of directors of last named company authorizing the same, dated 14th of June, 1900;

Petitioner's Exhibit 49, contract between the same parties, dated 24th of June, 1904;

Petitioner's Exhibit 50, resolution authorizing the same, dated the same date;

Petitioner's Exhibit 51, being contract between the General Paper Company and the Centralia Pulp and Waterpower Company, dated July 5, 1900;

Petitioner's Exhibit 52, resolution of the board of directors dated June 15, 1900;

Petitioner's Exhibit 53, contract between the same parties last named, dated 13th day of December, 1904;

Petitioner's Exhibit 54, being contract between the General Paper Company and the Grand Rapids Pulp and Paper Company, dated July 5, 1900;

Petitioner's Exhibit 55, being resolution of the board of directors, dated June 16, 1900;

Petitioner's Exhibit 56, contract between the same parties, dated 13th of December, 1904;

Petitioner's Exhibit 57, being resolution of the board of directors authorizing the same, passed July 7th, 1904 ;

Petitioner's Exhibit 58, being contract between the General Paper Company and the Wisconsin River Paper and Pulp Company, dated July 5, 1900 ;

370 Petitioner's Exhibit 59, resolution of the board of directors of last named company, dated June 18, 1900 ;

Petitioner's Exhibit 60, being contract between the same parties, dated December 13, 1904 ;

Petitioner's Exhibit 61, being resolution of the board of directors, dated 13th of July, 1904 ;

Petitioner's Exhibit 62, being contract between the General Paper Company and the Wausau Paper Mills Company, dated July 5, 1900 ;

Petitioner's Exhibit 63, being resolution of the board of directors of last named company, dated June 6, 1900 ;

Petitioner's Exhibit 64, being contract between the General Paper Company and the Tomahawk Pulp and Paper Company, dated July 5, 1900 ;

Petitioner's Exhibit 66, being contract between the same parties, dated December 13, 1904, and Exhibit 65, authorizing the latter contract ;

Petitioner's Exhibit 67, being contract between the General Paper Company and the Dells Paper and Pulp Company, dated July 5, 1900 ;

Petitioner's Exhibit 68, contract between the same parties, dated 28th of July, 1904 ;

Petitioner's Exhibit 69, resolution authorizing the latter contract, dated July 11th, 1904 ;

Petitioner's Exhibit 70, contract between the General Paper Company and the Falls Manufacturing Company, dated July 5, 1900 ;

Petitioner's Exhibit 71, being resolution of board of directors of last named company authorizing the same ;

371 Petitioner's Exhibit 72, being contract between the General Paper Company and the Hennepin Paper Company, dated July 5, 1900 ; for the term of one year ;

Petitioner's Exhibit 73, being contract between the same parties dated 5th of July, 1901, for the term of four years, with a resolution authorizing the same attached thereto ;

Petitioner's Exhibit 74, contract between the same parties, dated 17th of October, 1904, for the term of five years from July 5, 1905 ;

Petitioner's Exhibit 75, a resolution of the board of directors dated 17th of October, 1904, authorizing the latter contract ;

Petitioner's Exhibit 76, contract between the General Paper Company and the Itasca Paper Company, dated 5th of February, 1902 ;

Petitioner's Exhibit 77, resolution of the board of directors of Itasca Paper Company authorizing same ; dated May 1, 1902 ;

Petitioner's Exhibit 78, contract between same parties, dated the 6th day of July, 1904 ;

Petitioner's Exhibit 79, contract between the General Paper Com-

pany and the Northwest Paper Company, dated the 8th of April, 1902;

Petitioner's Exhibit 80, resolution of board of directors authorizing the same;

Petitioner's Exhibit 81, contract between the same parties, dated June 4, 1904;

372 Petitioner's Exhibit 82, resolution of the board of directors, dated May 11, 1904;

Petitioner's Exhibit 83, contract between the General Paper Company with the Petoskey Fibre Paper Company, dated 14th of July, 1902;

Petitioner's Exhibit 84, resolution of the board of directors, dated 7th of July, 1902;

Petitioner's Exhibit 87, being contract between the General Paper Company and the Riverside Fibre and Paper Company, dated 1st day of December, 1902;

Petitioner's Exhibit 88, resolution of the board of directors, dated 10th day of November, 1902;

Petitioner's Exhibit 85, contract between the same parties, dated 13th of December, 1904;

Petitioner's Exhibit 86, resolution of the board of directors, dated 3rd of December, 1904, authorizing the latter contract;

Petitioner's Exhibit 89, contracts between the General Paper Company and the Wolf River Paper and Fiber Company, dated 1st day of December, 1902;

Petitioner's Exhibit 90, resolution of the board of directors, dated December 6, 1902, authorizing the same;

Petitioner's Exhibit 91, agreement between the General Paper Company and the Menasha Paper Company dated 1st day of December, 1902;

Petitioner's Exhibit 92, resolution of board of directors, dated December 1, 1902;

Petitioner's Exhibit 93, contract between the same parties, dated 13th of December, 1904;

373 Petitioner's Exhibit 94, contract between the General Paper Company and the Flambeau Paper Company, dated 1st of December, 1902;

Petitioner's Exhibit 95, resolution of the board of directors dated December 2, 1902;

Petitioner's Exhibit 96, contract between the same parties dated 6th day of June, 1904;

Petitioner's Exhibit 97, resolution of the board of directors, dated June 6, 1904;

Petitioner's Exhibit 98, contract between the General Paper Company and the Rhinelander Paper Company, dated 31st day of August, 1904;

Petitioner's Exhibit 99, contract between the General Paper Company and Consolidated Water Power and Paper Company, dated 13th of July, 1904;

Petitioner's Exhibit 100, resolution of the board of directors of last named company, dated July 10, 1904;

Mr. KELLOGG: Mr. Examiner, it is agreed between counsel that you may make copies of these contracts and resolutions, Exhibits 30 to 100 inclusive, and that they may be substituted in the record for the originals offered in evidence; the originals however to be produced at any hearing in this case before the examiner or in any court, whether in the trial court or upon an appeal, upon notice to the defendants' counsel or solicitors.

(A schedule of the above contracts is to be made, if this can be done, the contracts to be produced at any time.)

374 Q. I notice, Mr. Alexander, that the first fourteen contracts of the mills named by you and which have been introduced in evidence in this case are all dated July 5, 1900; they are all signed by you as secretary, are they not?

A. Yes sir, I think they are.

Q. That is the date that your ledger shows moneys were paid in for those by the several companies, is it not?

A. Yes sir. Well, it is the date that the most of them were paid in.

Q. Well, it is the date the entries show on the books?

A. The most of them.

Q. Had the money been received before that—the checks?

A. I don't recall.

Q. You made those entries yourself?

A. Yes sir.

Q. It is not reasonable to suppose it was all received on that same date, every check, is it?

A. I should think probably about that day.

Q. Well, was there a meeting on that day where all these parties were present?

A. I don't recollect; I hardly think so.

Q. Do the minutes show any meeting on that day?

A. I think not.

Q. Well, there was a meeting in Appleton, Wisconsin, on June 18th that we have been talking about?

A. Yes sir.

Q. Now were these contracts presented at that meeting?

A. I don't think so.

Q. What action was taken at that meeting on the subject of closing these contracts other than what you have read in evidence?

375 A. I don't recall that there was any other action taken.

Q. You were present at that meeting on June 18th, in Appleton were y-u not?

A. Yes sir, I think I was.

Q. Did you give out a statement of what occurred at that meeting to the trade paper?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, and that any statement made under the circumstances indicated by the question would not be within the legitimate scope of the authority of the witness as an agent for the General Paper Company or any other corporation with which he was connected, and was not made, if made at all, while acting as an agent for the General Paper Company or any other corporation with which he was connected.

(After consultation with Mr. Barnes) Well, I think—in fact I know—I will instruct you not to answer that question.

Q. Do you refuse to answer that question, Mr. Alexander?

A. Under advice of counsel I do.

Q. You were there acting as a director and officer of the General Paper Company, were you not?

Mr. FLANDERS: That is objected to for the same reason and as leading and indefinite and vague; and I will request the counsel to reframe that question so as to indicate when and where he refers to.

Mr. KELLOGG: I will do that, Mr. Flanders.

Q. On June 18, 1900, you were at Appleton, Wisconsin, attending a meeting of the board of directors of the General Paper Company as a director and as secretary of that company, were you not?

A. Yes sir, I think I was.

Q. At that time did you state to a reporter of the Trade Journal that the contracts closing the matter were all ready, and the only point to be settled was as to who was to sign them; finally it was settled that all the mills in the State making print, manila and fibre would sign, except the Marinette and Menominee Paper Company; and then did you give a list of the companies who had signified their willingness to enter into contracts?

Mr. FLANDERS: That is objected to for the same reason.

Question read.

Mr. FLANDERS: Now I request the counsel to make that question definite in relation to the words which he uses at the commencement of the question, "did you at that time," by specifying the time and place. In other words, the 18th of June contained twenty-four hours, and Appleton covered I don't know how many square miles. Now, if the counsel is willing to do it (if he is not, of course he will say so), I would like to have him define the time and place and circumstances under which he claims any such statement was made, if made at all?

Q. Well, did you make that statement in those words or in substance to a reporter of the paper Trade Journal, in the city of Appleton, after the meeting of the board of directors on June 18, 1900?

377 Mr. FLANDERS: You have got a double question there. Put it giving one period or the other, first. You say, "After the meeting of the board or during the meeting."

Mr. KELLOGG: Well, after the meeting of the board.

Mr. FLANDERS: Now that is objected to for all the reasons hereinbefore stated, and I instruct the witness not to answer.

Q. You refuse to answer.

A. Under advice of counsel I do.

Q. Did you make that statement during the meeting of the board?

Mr. FLANDERS: I instruct the witness not to answer.

Q. You refuse to answer the question?

A. Under advice of counsel I do.

Q. Were any contracts or the form of any contract or contracts to be entered into between the General Paper Company and any of these defendants presented at that meeting or discussed at that meeting of the board of directors at Appleton on June 18, 1900.

A. I can't recall.

Q. You have no recollection on that subject.

A. I don't remember.

Q. You remember the resolution that the contracts were all to be in the hands of the secretary before Saturday June 23, 1900, don't you? Do you remember that resolution adopted at that meeting?

A. I have forgotten it for the time being.

378 Q. Will you refresh your memory, then?

Mr. Flanders hands witness Petitioner's Exhibit 29, which the witness refers to.

Q. Now do you remember that resolution?

A. Yes sir.

Q. When did you first see these contracts or any of them or any form of these contracts.

A. I don't remember.

Q. You have no recollection?

A. Not as to a definite time, no sir.

Q. Was it before June 18, 1900?

A. I presume so.

Q. Where?

A. I couldn't state.

Q. Were they presented, or did you see them at any meeting of the directors of that corporation?

A. I may have seen the form of the contract at that meeting.

Q. On June 18th?

A. I may have, I don't remember.

Q. Hadn't you seen it before then?

A. I presume I had.

Q. Did you procure it to be drawn up?

A. Part of them or some of them I think I did.

Q. When? Before that meeting or afterward?

A. I don't remember that.

Q. Where were they drawn?

A. I don't recall that. In Milwaukee, I think, what I had to do with them.

Q. Do you mean that you drew some of them?

A. I think I did.

Q. They are all in the same form, aren't they?

A. Practically.

Q. Did you draw the form?

A. The original form, no sir.

379 Q. Who did?

A. I think that was done by the attorneys.

Q. Who was the attorney who drew it?

A. Mr. Flanders.

Q. Did he deliver the form to you?

A. I don't remember that.

Q. Did he ever show it to you?

A. I don't recall that either.

Q. Have you any recollection of ever having seen one of those contracts until you attached your name to it on July 5th, 1900?

A. Yes sir, I saw it previous to that.

Q. When?

A. I couldn't tell you the exact date.

Q. Did you attach your name before July 5, 1900?

A. I couldn't say that.

Q. Do you know when you did attach your name?

A. I think about that date; my recollection would be about that date.

Q. Wasn't it prior to that time?

A. It might have been a little.

Q. Did the company actually commence business on July 1st?

A. No sir.

Q. There was a meeting in Chicago of the executive committee, before July 2nd, was there not?

A. There may have been; I can't recall it.

Q. You are a member of the executive committee?

A. No sir.

Q. Mr. Alexander, will you look at the contract, Petitioner's Exhibit 43 and see if you did not sign it, as secretary of the General Paper Company and as president of the John Edwards Manufacturing Company (handing witness Petitioner's Exhibit 43)?

A. I did.

380 Q. Was the resolution of the board of directors of the John Edwards Manufacturing Company adopted on June 15, 1900?

A. Yes sir.

Mr. FLANDERS: Let me see that a moment.

Contract handed to Mr. Flanders.

Q. Do you remember the meeting?

A. Yes sir.

Mr. FLANDERS: Wait a minute, Mr. Kellogg. I can't look at it and the witness, too.

Q. Did you say you remembered the meeting?

A. Yes sir.

Q. Who reported to the meeting the form of the contract—you?

A. At that time?

Q. Yes sir; at your meeting, of the John Edwards Manufacturing Company?

A. I presume so.

Q. You presume you did?

A. I presume I did.

Q. Were all these contracts which the resolution of the board of directors adopted on June 18, 1900, provided should be in your hands by July 23, 1900, were they in your hands by that time?

A. I don't remember; I couldn't tell you.

Mr. FLANDERS: What is the date of that contract, Mr. Alexander?

WITNESS: July 5th.

Q. The form of that contract was submitted to the board of directors by you on June 15, 1900, was it not?

A. At Port Edwards, Wisconsin?

Q. Yes.

A. I think it was, probably.

Q. Then you must have had the form of this contract before June 15, 1900.

A. Yes, probably I did.

381 Q. Now, wasn't the form of this contract presented at the meeting of the board of directors on May 26th, 1900, or some subsequent meeting (board of directors of the General Paper Company on May 26, 1900)?

A. It may have been.

Q. Well, do you know whether it was or not?

A. I can't say positively.

Q. You have no recollection?

A. Not positively.

Q. What is your best judgment, Mr. Alexander?

A. I should think it was.

Q. You should think it was.

A. Yes sir.

Q. Now when? May 26th?

A. May 26th.

Q. That was the day you organized your company? That was your meeting for organization?

A. Yes sir.

Q. Now on that day it is your recollection that the form of the

contract was submitted to the board of directors for their consideration and approval?

A. It may have been.

Q. Well, what is your best recollection?

A. Well I have just stated that my best recollection is that it was.

Q. Now what was the discussion between the gentlemen present on May 26th as to the form of this contract?

MR. FLANDERS: That is objected to as assuming a fact not proven in the case and assuming that the witness has testified to something that he has given no testimony about.

Q. Well, was there any discussion by the board of directors, or any member of the board, at that meeting, on May 26, 1900, as to the form of this contract?

A. There may have been; I don't remember.

Q. You have no recollection. Do you remember, of any meeting of any of the gentlemen who were at that meeting on May 26, prior to that time?

A. I don't recall any; I can't remember.

Q. You have no recollection of any?

A. I don't remember.

Q. Have you any recollection of any meeting held anywhere prior to May 26, 1900, at which you were present, discussing the organization of a paper company or a combination of these paper mills?

A. I don't remember.

Q. Well, do you think these gentlemen on May 26th, simply happened to be together, Mr. Alexander?

MR. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and improper in form.

Q. Do you think they simply happened to be together?

A. I don't think so.

Q. Do you remember a meeting held at the Grand Pacific hotel in Chicago in March, 1900?

MR. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I don't remember.

Q. Let me refresh your recollection. Do you remember of a meeting there at which Mr. John A. Kimberly was present, Mr. W. Z. Stuart, Mr. T. E. Nash, Mr. Frank Garrison, Mr. John Van Nortwick, Mr. A. M. Pride, Mr. George E. Whiting, Mr. Charles Babcock and yourself, Mr. Charles C. Brocklebank? Do you remember that meeting?

383 A. I don't remember it now, no sir.

Q. Have no recollection of any such meeting?

A. I have no recollection as to that date, or of being there, or the meeting.

Q. Have you a recollection of a meeting being held there at the Grand Pacific hotel in Chicago, prior to May 26, 1900, when you organized this company?

A. I don't remember now.

Q. Do you remember of any meeting prior to May 26, 1900, by any of these gentlemen whom I have named, at which you were present, at which this subject was discussed at all?

Mr. FLANDERS: That is objected to as vague and indefinite nothing in the question to indicate what counsel means by the words "this subject."

Mr. KELLOGG: The organization of the General Paper Company to act as selling agent for these mills, or procuring any other company to act as selling agent.

A. I don't remember just now.

Q. You have no recollection of any such meeting?

A. I don't remember the meetings.

Q. Do you remember of the fact of any such meeting?

A. At what time?

Q. Any time prior to May 26, 1900. There were several of them, and you know of them I think.

Mr. FLANDERS: Well, now, I object to that statement of counsel as—

Mr. KELLOGG: I will say that he was present.

Mr. FLANDERS: Now just wait a minute. I object to that statement of counsel, and I ask the examiner to take down my objection; and I desire to designate it as uncivil and unfair and improper; to insist on the record, that this witness is entitled to be treated with civility and courtesy throughout, and that there is not a thing in his demeanor or answers upon this examination which warrants the course which the counsel persists in pursuing towards him.

Mr. KELLOGG: We will take the responsibility of that.

Mr. FLANDERS: Well, you will have to.

Mr. KELLOGG: Mr. Alexander attended several meetings prior to that time.

Mr. FLANDERS: You know as well as I do that you haven't any right to make such a remark to him or to any other witness.

Q. You have no recollection of any meeting at all; is that your answer?

A. I don't remember.

Q. You don't remember that you have no recollection, or what don't you remember?

384 A. I don't remember about the meetings that you refer to.

Q. Or any meetings prior to May 26, 1900?

A. I don't remember them now.

Q. How did you happen to go to this meeting on May 26th, 1900?

A. What date?

Q. May 26, 1900?

A. I don't recall why I went to that meeting; that is, the form of agreement to go to that meeting.

Q. You have no recollection of why you went to that meeting?

A. Yes, I have a recollection of why I went, but——

Q. Why did you go?

A. By appointment.

Q. Who with?

A. I don't recollect who with.

Q. Did you know prior to that time that a meeting was to be held to organize the General Paper Company on that day?

A. Yes sir, I think I did.

Q. Whom did you learn that from?

A. I don't remember whom I learned that from.

Q. Have you any correspondence with any of the officers of these defendant companies relative to a meeting to be held on May 26th, or any meeting to be held to organize the General Paper Company?

A. I may have had notice, or correspondence.

Q. Will you produce the letters either that you wrote or that you received to that effect?

A. If I have them, I don't——

Q. Well, please examine and see if you have them.

Mr. FLANDERS: Now read that request to me.

Last question to the witness read.

385 Q. I wish any correspondence between you and any of the officers of these defendant companies prior to May 26, 1900, relative to the organization of this General Paper Company, either that you received or sent. Now do you recollect any such correspondence? What is your best recollection?

A. I don't recollect about the correspondence. I couldn't say.

Q. Did you ever have any conversation with any of the officers of any of these defendant companies prior to May 26, 1900, relative to the organization of a General Paper Company, or any company to act as sales agent for any of these defendant mills?

A. Yes sir, I think I did.

Q. Who with?

A. I don't remember.

Q. No recollection?

A. No sir.

Q. Who interested you in this project?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I don't recollect who interested me specifically.

Q. Whom did you discuss it with?

A. I presume I discussed it more or less with most of the men who eventually went into the General Paper Company?

Q. You presume you did?

A. I presume I did.

Q. Where?

A. I couldn't tell that; I don't remember.

Q. Milwaukee, or any other place?

A. I don't recollect.

Q. How long before May 26th was this project started?

Mr. FLANDERS: Same objection.

S. I don't remember that.

386 Q. How long before May 26th did you discuss it with them or any of them?

Same objection.

A. I don't remember.

Q. What was the subject of your discussion?

Same objection.

A. I don't remember just the subject.

Q. Well, give us the substance, the best you can recall.

Same objection.

Q. I can't give you the substance.

A. Well, what was the subject matter discussed between you?

Same objection.

A. The results are the best evidence I think of what was the subject matter between us.

Q. You discussed then, this corporation and plan and scheme that you finally carried out, did you?

Same objection.

A. I presume we did.

Q. Do you know whether you did or not?

A. I think we did.

Q. How long before May 26th 1900 did you discuss it?

Same objection.

A. I don't remember.

Q. You have no recollection? Was it months before or a year before?

Same objection.

A. I don't remember.

Q. Your recollection commences with May 26th, 1900, does it?

Objected to for the same reason.

387 A. The record shows that, yes sir.

Q. The record shows that ?

A. Yes sir.

Q. You mean the record of the corporation shows that, I suppose ?

A. Yes sir.

Q. That is the only recollection that you propose to have on the subject.

Mr. FLANDERS : Just wait a minute. That is objected to as irrelevant, incompetent, immaterial and improper.

Q. What is your answer to that ?

A. I would like to have the question again, please.

The question was read.

Mr. FLANDERS : I don't think you are called upon to answer that question, Mr. Alexander, unless you want to. It is an affront and intended as such. I advise you that you are not obliged to answer it.

Q. Do you decline to answer ?

A. I would be pleased to have it read.

Question was repeated.

Mr. FLANDERS : Answer it if you see fit, Mr. Alexander.

Q. Well, do you decline to answer it ?

A. Under advice of counsel—

Mr. BECK : No, but your counsel has not advised you.

WITNESS : Oh.

Mr. BECK : It is a little premature.

Mr. FLANDERS : Answer the question, Mr. Alexander, whether that is the only recollection you *propose* to have in this case.

WITNESS : Definite recollection, yes.

388 Q. Now this organization of this company was a pretty important matter, wasn't it ?

A. Yes sir.

Q. It has handled the products, a part of the time, of twenty-three mills, hasn't it ?

A. Yes sir.

Q. Aggregating in value more than ten millions in dollars of sales per annum, hasn't it ?

A. About that some years.

Q. And the contract which you made for your company absolutely surrendered to this company the right to sell your product during five years, didn't it ?

A. Yes sir.

Q. And you say that a leading man in three mills, involving that amount of money,—that you have no recollection of what took place prior to May 26th, 1900, when you attended that meeting : is that your answer ?

A. I don't think I testified in that manner.

Q. Well, is that true, or isn't it true?

A. I think I testified that I may have talked this over, but as to the time and when and what was said, I could not remember.

Q. Well, do you wish to be understood as saying that in a matter of that importance to your company and to all these companies you don't remember any discussion or the substance of any discussion with any of these gentlemen prior to May 26th, 1900?

Mr. FLANDERS: Now please — a minute on there. My objection again to the manner and tone and bearing of counsel toward
389 the witness is unjustifiable and unwarranted and uncivil.

Q. Please answer the question.

Mr. FLANDERS: I may have to call you, Mr. Examiner, as a witness if this becomes material, and I will ask you to bear in mind the ferocity of the expression of my distinguished friend from St. Paul when he pours these questions at the witness upon the stand.

Mr. KELLOGG: Now if you will read that question.

Mr. FLANDERS: I may ask you to bring a kodak here and take a photograph of it.

Mr. BECK: And we will ask the examiner at the same time to take the picture of the witness, the manner and length of time which he takes to answer the questions, the abashed look and the sheepish face and the lack of candor.

Mr. FLANDERS: I move to expunge from the record the remarks of the distinguished counsel from New York, as not in accordance with the rules and practice in the wild and woolly West, but are unjustified, unwarranted and uncivil.

Q. Now will you answer that question?

A. I have already testified that the result of what was done is the best evidence of what was probably discussed before its culmination.

Q. Do you know about the Manufacturers Paper Company?

A. Yes sir.

Q. Did you ever attend a meeting when Mr. Brocklebank was present?

A. Yes sir.

Q. When?

390 Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and not within the issue.

Q. When did you attend that meeting?

A. I don't remember.

Q. Was it prior to May 26th, 1900.

Same objection.

A. It may have been.

Q. Where was it?

Same objection.

A. It may have been in his office in Chicago.

Q. Well, what is your best recollection of it?

Same objection.

A. That is my best recollection of it.

Q. That it was in his office in Chicago.

A. Yes sir.

Q. What other gentlemen were present?

Same objection.

A. I couldn't say.

Q. You have no recollection? nobody else except you and Brocklebank?

Same objection.

Q. Have you any recollection of anyone else being present?

Same objection.

A. It is possible there were other gentlemen present.

Q. Well, what is your best recollection.

A. I think there were other people present.

Q. Who were they?

Same objection.

A. I don't remember unless it was my business associate, Mr. Garrison.

391 Q. You recollect of his being present?

A. Yes sir.

Q. And who else? Anybody else?

A. Possibly Mr. Nash.

Q. Anybody else?

A. I don't remember.

Q. Did you have any discussion about the Manufacturers Paper Company acting as sales agent for all these defendant mills, or a part of them?

Objected to as irrelevant, incompetent and immaterial.

Mr. FLANDERS (after a conference with his associate counsel): I advise the witness not to answer.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. Well, you recollect such a meeting now, do you?

Mr. FLANDERS: That is objected to for the same reason and the same advice given.

Q. You refuse to answer?

A. Under the advice of counsel I do.

Q. Now I ask you if you didn't attend a meeting at the Grand Pacific hotel in Chicago, at which you were present, Mr. Brockle-

bank, Mr. Garrison, Mr. Nash, Mr. Whiting, Mr. Kimberly, Mr. Stuart, that I have heretofore named, and perhaps others, at which meeting a discussion was had, and a proposition made to the Manufacturers Paper Company to act as selling agent?

Mr. FLANDERS: That is objected to for the same reasons as irrelevant, incompetent, immaterial and not within the issue. And I advise the witness not to answer.

392 Q. Do you refuse to answer?

A. Under the advice of counsel I do.

Q. Do you recollect any such meeting?

Mr. FLANDERS: That is the same objection and the same advice.

Q. You refuse to answer?

A. Under advice of counsel I do.

Q. Did you make a statement to anyone after that meeting of what occurred at that meeting?

Mr. FLANDERS: Now just one minute. That goes the last one one better. That is objected to as irrelevant incompetent and immaterial and not within the issue and on the ground that if any such statement was made it was not binding upon anybody, not within the legitimate scope of his authority as agent for anybody, and not part of the *res geste*, and for all the other reasons hereinbefore stated. I advise you not to answer that question.

Q. You decline to answer, do you?

A. Under advice of counsel I do.

Mr. BECK: Do the counsel for the Government understand that the counsel for defendants in this case and throughout the proceedings claim the right to pass upon the relevancy and materiality of testimony, by interfering with the witness on the stand? If so, counsel for the Government would like to know under what equity rule or under what decision of the Federal courts any such power can be claimed by the learned counsel for the defendants.

393 Mr. FLANDERS: I invite the distinguished gentleman from New York and the other distinguished gentlemen from St. Paul down to my office at any time, and will afford them the best entertainment I am capable of, and give them authorities until they can't rest on that subject.

Mr. BECK: Counsel for the Government reply to the distinguished counsel from Milwaukee that without questioning the entertainment they would get doen at his office, which would doubtless be delightful and hospitable, it would be impossible for them to get any information that would justify such a course on the part of the counsel for the defendants.

Mr. FLANDERS: Well, you might not be able to get the information, but I can show it to you. I can't furnish the other side with the intellect.

Q. Mr. Alexander, did you not attend a meeting in Chicago, at the Grand Pacific hotel, at which you were present, Mr. Brocklebank of the Manufacturers Paper Company, Mr. J. A. Kimberly, Mr. T. E. Nash, Mr. F. Garrison, Mr. George A. Whiting, Mr. A. M. Pride, Mr. John Van Nortwick, Mr. Charles Babcock (all of whom except Mr. Brocklebank were afterwards directors or officers of the General Paper Company), at which meeting you discussed the plans for organizing or for procuring the General Paper Company to act as the exclusive sales agent of these defendants, or some of them (the Manufacturers Paper Company, I mean), and at which you afterwards discussed the plans of organizing the General Paper Company? I mean this meeting held sometime in March, 1900.

394 Mr. FLANDERS: Now that question is objected to for all the reasons hereinbefore stated, and I respectfully request the counsel for the Government to separate the question so that we can have it not in a double-barrelled form.

Q. Will you answer the question?

Mr. FLANDERS: Well, then, I instruct you that you are not to answer anything in relation to the Manufacturers Paper Company or any discussion about selecting it as an agent at all.

A. Under advice of counsel I do.

Q. Did you attend any meeting prior to May 26th at which those gentlemen, or any of them, were present, when you discussed the plans for the organization of a selling company?

Mr. FLANDERS: That is objected to for all the reasons hereinbefore stated.

A. I don't remember.

Q. You have no recollection of any such meeting?

A. I have already stated that I don't remember.

Q. What is it that you do not remember,—the details of the meeting, or that you don't remember any meeting at all?

A. Both.

Q. You have no recollection about the subject at all?

A. Of the meetings, no sir, or the attendance.

Q. Or of any meetings prior to May 26, 1900?

A. No sir, I don't remember that I attended any meeting prior to May 26th, 1900, where the matter of the formation of the

395 General Paper Company was discussed or the conditions fixed for it.

Q. Well, do you remember any meeting where the subject of organizing or forming any company to act as sales agent was discussed?

Mr. FLANDERS: Same objection.

A. I don't recall any meeting that I attended on that subject.

Q. You don't; at any time prior to May 26th?

A. No sir.

Q. Well, can you give me any reason why you gentlemen all came together there on May 26th?

Mr. FLANDERS: Objected to as incompetent, irrelevant, immaterial and not within the issue.

A. I think I have already testified and given my reasons for that.

Q. Well, what are they? What did you come together for on that date?

Mr. FLANDERS: Same objection.

A. The action that was taken on the meeting of May 26th is the best evidence of what we came together for and why we came together.

Q. You decline to state why you came together other than as appears by the record, do you?

396 Mr. FLANDERS: That is objected to as assuming a fact not shown in the case and not correctly stating the answer and evidence of the witness.

Q. You came together for the purpose, did you, of organizing the General Paper Company?

A. Yes sir.

Q. In which you had previously agreed that you would make it a general selling agent for your company?

Mr. FLANDERS: Now wait a minute. That is objected to as assuming facts not appearing from the testimony of the witness.

Q. Well, is that true, or is it not?

A. I would like to have the question read, please.

Mr. KELLOGG: Read the question.

Question read by the examiner.

A. I don't remember of an agreement previous to that meeting.

Q. Was there any understanding that this company would be the selling agent for your companies?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. There may have been.

Q. Do you know whether there was or not?

Same objection by defendants.

A. I think there was.

Q. Who with?

Same objection by defendants.

397 A. With the parties—with those whose names appear in connection with the organization of the General Paper Company.

Q. Name them.

Same objection by defendants.

A. I will have to refer to the records.

Q. Name the men with whom previously you had an understanding that their mills were to go into this combination and make this paper company the general selling agent.

A. I don't think I testified that we had an agreement previous to this time.

Q. Did you have any understanding previous to that time what you would do with the General Paper Company?

A. We may have.

Q. Well, did you have? I don't ask you what you may have had.

A. I don't remember.

Q. You recall no understanding with anybody what you were to do with the General Paper Company?

A. I don't think the General Paper Company was organized until that date.

Q. When it became organized what were you to do with it?

Mr. FLANDERS: Same objection.

A. It was to be a selling agency for the product of such mills as they could induce to place their product with it.

Q. Was that the general understanding before the company was organized?

398 Mr. FLANDERS: Objected to for the same reason and not within the knowledge of the witness.

Q. Was that the general understanding?

A. I think so.

Q. Had you consented previous to that time to make it the general selling agent for your company?

Mr. FLANDERS: That is objected to for all the reasons hereinbefore stated.

A. I don't think so.

Q. Had you ever had any discussion about making it the selling agent for your company?

Objected to by Mr. Flanders as irrelevant, immaterial and incompetent.

A. I don't remember.

Q. Did you expect to make it the selling agent of your company?

Mr. FLANDERS: Same objection.

A. When we organized, yes sir.

Q. Now, wa-sn't it understood between you and the other gentle-

men who were influential in the organization of it, that when organized it was to be the general selling agent?

Mr. FLANDERS: Same objection.

Q. For all the companies represented by them.

A. I think the action that we took there is the best evidence of what was done.

399 Q. It don't make any difference what you think. I want your answer to that question.

A. The action of what was done at the organization is the best evidence of the understanding.

The following question was read to the witness at request of Mr. Kellogg: "Now, wasn't it understood between you and the other gentlemen who were influential in the organization of it, that when organized it was to be the general selling agent? * * * For all the companies represented by them?"

Mr. KELLOGG: I am going to have your answer to this question or have you commit perjury, one or the other.

Mr. FLANDERS: I object——

Mr. KELLOGG: Now, Mr. Alexander——

Mr. FLANDERS: You needn't answer until my objection goes upon the record.

Mr. KELLOGG: Very well.

Mr. FLANDERS: I object to the remarks and statement of the counsel as unjustifiable, unwarranted, uncivil, improper and in the nature of a threat to a witness under subpoena by the Government and placed upon the stand as its witness, and a violation of all rules of practice and orderly procedure with which I am familiar. If the counsel can call witnesses here and from his position as counsel threaten them in the witness-box, that is a practice to be passed upon hereafter.

400 Mr. KELLOGG: I haven't made any threat to Mr. Alexander.

Mr. FLANDERS: Well, the record shows what you said.

Q. Now, Mr. Alexander, I want to know if you had any conversation with anybody prior to May 26th as to what the General Paper Company was to be used for, whether it is to be a selling agent—I will withdraw that question. Read the previous question, will you, please?

Mr. FLANDERS: Well, do you withdraw your threat? Do you withdraw your previous threat?

Mr. KELLOGG: I made no threat.

Mr. FLANDERS: Either withdraw it or say you don't.

Mr. KELLOGG: I haven't made any threat.

Mr. FLANDERS: You decline to withdraw it, then?

Mr. KELLOGG: I haven't made any threat.

Mr. FLANDERS: Do you decline to withdraw the statement you

made to him—that you would either have an answer or have him commit perjury? Now you can take either course you have a mind to—either withdraw it or say you won't.

Mr. KELLOGG: I haven't made any threat to Mr. Alexander, and I had no intention—

Mr. FLANDERS: Did you make that statement?

Mr. KELLOGG (to the examiner): Will you please read the question?

Mr. FLANDERS: You decline, then, do you, to withdraw it?

401 Mr. Kellogg makes no response.

Mr. FLANDERS: Now you might note that the distinguished counsel remains mute.

The following portion of the record was then read:

"Q. Now, wasn't it understood between you and the other gentlemen who were influential in the organization of it, that when organized it was to be the general selling agent?"

"Mr. FLANDERS: Same objection.

"Q. For all the companies represented by them?"

Mr. FLANDERS: We interpose another objection, on the ground that it has been asked and answered at least three times.

Q. Do you wish to make any other answer, or will you make any other answer?

A. Will you please read the question again?

The question was read.

A. I think it was.

Q. Now name those men; what companies that understanding was with.

A. I can't do it.

Q. Just give us the list of them as near as you can recollect it.

A. I can't do it; I don't remember.

Q. Was Mr. Kimberly one of them, as representing his companies?

A. Yes sir, I think I talked to Mr. Kimberly about it.

402 Q. Wasn't it understood that his mills, or some of them, were to go into the arrangement?

A. Yes sir, I think it was.

Q. Mr. T. E. Nash?

A. Yes sir.

Q. Mr. John Van Nortwick?

A. I don't remember. I haven't—

Q. The Atlas Paper Company?

A. I don't remember as to the Atlas Paper Company.

Q. The Combined Locks Paper Company?

A. I don't remember.

Q. The C. W. Howard Company?

A. I don't think I ever talked with—

Q. The John Edwards Manufacturing Company?

A. Yes sir.

Q. The Nekoosa Paper Company?

A. Yes sir.

Q. The Centralia Pulp and Water-Power Company?

A. Yes sir.

Q. Grand Rapids Pulp & Paper Company?

A. Yes sir, I think so.

Q. The Wisconsin River Paper and Pulp Company?

A. That I don't remember.

Q. The Wausau Paper Mills Company?

A. I don't remember as to that.

Q. Tomahawk Pulp and Paper Company?

A. I don't know; I don't remember as to that.

Q. Dells Paper & Pulp Company?

A. I don't remember that I talked with any official of that company in regard to the—

Q. The Hennepin Paper Company?

A. I can't remember as to that.

Q. Now, wasn't it understood by you previous to May
403 26th, 1900, that when the General Paper Company was organized the mills represented by the following named gentlemen would make that company the exclusive selling agent, to-wit: J. A. Kimberly, F. C. Shattuck, C. W. Howard, John Van Wortwick, T. E. Nash, F. Garrison, E. T. Harmon, George A. Whiting, C. A. Babcock, W. L. Edmonds, N. H. Brokaw, E. A. Edmunda, A. M. Pride, D. R. Davis, and B. F. Nelson?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. There may have been a general understanding of that kind.

Q. Was that your understanding?

A. That was my general understanding, but nothing definite until its organization, until the organization of this company.

Q. Do you understand that was the general understanding among those gentlemen?

Mr. FLANDERS: Same objection.

A. Yes sir, I think it was.

Q. Now, that understanding was arrived at in conversations with them, wasn't it?

Mr. FLANDERS: Same objection.

A. Why, I think so; general talk.

Q. Or correspondence—which?

A. I don't remember any correspondence; I don't remember as to that.

Q. Then, you must have had conversation with those men about this subject, or most of them?

A. I may have had with some of them, but not most of
404 them.

Q. From whom did you get the information that these mills were coming in?

A. I don't remember just the persons where I would get the most information from.

Q. And do you still say that there was no preliminary meeting of these gentlemen or any of them prior to May 26th?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and assuming facts to have been testified to by the witness which have not been testified to; assuming as facts shown in the case facts which have not been shown.

A. I don't think I have testified that there was not any preliminary meetings, but I say I don't remember.

Q. You say you haven't any recollection of any preliminary meeting between yourself and these gentlemen or any of them?

Same objection by defendants.

A. I say I do not remember.

Q. Of any such meeting?

A. Of any such meeting, no sir.

Mr. KELLOGG: Now, we asked Mr. Alexander, yesterday and today, to produce several matters. His correspondence books, the books of the constituent companies that he is interested in, the checks and receipts, and the other books that we have asked for. Will you have them here tomorrow morning?

Mr. FLANDERS: Why, no, you haven't asked for any such things.

405 You have asked for some things, but you have got a lot of things in there that were never mentioned before. And, furthermore, how do you expect a man to spend from 10 to 5 on the stand, in any condition of health, much less Mr. Alexander's, and be getting things from all over three or four States? We brought the books up here and you dropped them like hot potatoes.

Mr. KELLOGG: We haven't got them all yet.

Mr. FLANDERS: You got all that you asked for.

Mr. KELLOGG: I ask for all the books showing the payments for any stock and all payments for any stock of the General Paper Company. Mr. Alexander stated that there was a journal that he didn't have.

Mr. FLANDERS: We got all we could for you. You asked for it yesterday afternoon, and a special messenger was sent from here to Chicago to get these books and bring them up here, and I asked you to get through with them as quick as you could, and you dropped them as though they were hot.

Mr. KELLOGG: We can't use the books in piecemeal. If you will produce the journal that shows the transaction in connection with the other books we will use it.

Mr. FLANDERS: We will get the books for you as fast as we can.

406 Mr. KELLOGG: Now in connection with that, I wish the bank books or books which show the payment by each of these constituent companies for the stock issued to these record stockholders in the General Paper Company.

Mr. FLANDERS: Well, would you like those by breakfast?

Mr. KELLOGG: No sir.

Mr. FLANDERS: Here are twenty-five mills in at least three States.

Mr. BECK: No, we are speaking of the three mills he represented.

Mr. FLANDERS: Mr. Kellogg said all of the constituent companies.

Mr. KELLOGG: Well, I do; I want that also. Mr. Alexander testified that he had books of the General Paper Company showing—

Mr. FLANDERS: Now I told you we would get that journal and any other books we can, down there, that show the payments for that stock. A special messenger was sent down at 5:45 last night and brought these books, supposing they were all that were needed. Now if there is a missing journal we will get that.

Mr. BECK: We would like the witness to produce, as soon as conveniently can be—and that is before the closing of his examination—the ledgers of the three constituent companies with which he personally was identified; the check books showing payment by the three companies of the different amounts of the subscriptions to the stock of the General Paper Company, and also all letter books of the three constituent companies, and also any personal letter book of the witness for the years 1900 and 1901.

Mr. FLANDERS: Well, that is a pretty broad call, Mr. Beck.

Mr. BECK: Well, I put in purposely, "as soon as conveniently may be."

Mr. FLANDERS: It is a pretty broad call. Might take half a car to bring that down here. I guess it would.

Mr. BECK: Oh, I shouldn't think that.

Mr. FLANDERS: Well, may be a quarter of a car. You are not entitled to and you are not going to go through all these letter books—not so long as I am on earth.

Mr. BECK: Of course, if they are not voluntarily given, Mr. Flanders, we will have to subpoena the witness and allow the court to decide.

Mr. FLANDERS: We will take care of the court when we get there.

Mr. BECK: Yes.

Mr. FLANDERS: But designate something within reason, that we can comply with, and we will do it; but you ask for all the letter books of three constituent companies, situated hundreds of miles away from here. If you tell us what you want and bearing on what subject, why, that is a different matter.

408 Mr. BECK: I will limit the call for letter books to the years 1900 and 1901. So far as the check books and the original checks which were returned, showing the payments of the different subscriptions to the stock in the name of the witness, Mr. Alexander; that call we think is sufficiently specific; and so far as the request for the general ledger is concerned: if there be different ledgers for different years, then we will say that the only ledger we wish is the ledger for the years 1900 and 1901.

Mr. KELLOGG: You are talking about what companies?

Mr. BECK : The three constituent companies with which the witness is identified.

The hearing was thereupon adjourned, until the morning of Thursday, May 18th, 1905, at the same place.

409 James G. Flanders, Volume 3.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of L. M. Alexander.

Third Day, May 18 / 05.

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ROBERT S. TAYLOR,
Special Examiner.

410 THURSDAY, May 18, 1905.

310 Federal Building, Milwaukee, Wisconsin.

The hearing was resumed before the examiner, at the above time and place, all parties being present.

The witness L. M. ALEXANDER was recalled, and his direct examination resumed.

Circular marked for identification Petitioner's Exhibit 101, and submitted to Mr. Flanders.

Q. Mr. Alexander, I show you Petitioner's Exhibit 101, which purports to be a circular issued by the General Paper Company on July 5, 1900. Will you please examine it and state whether that circular was issued and sent out about that date, about July 5, 1900?

Mr. FLANDERS : If you know.

A. (After looking over circular.) I think it was.

Mr. KELLOGG : I offer this in evidence, Petitioner's Exhibit 101.

Mr. FLANDERS : It is objected to as irrelevant, incompetent and immaterial.

Q. As it is objected to as incompetent, perhaps I should ask you if this circular was printed by the General Paper Company and generally sent to the trade throughout the country.

Mr. FLANDERS: That is objected to for the same reasons.

A. I think that our sales manager had that printed and sent to the trade.

Petitioner's Exhibit 101 was offered in evidence, and read into the record as follows:

411 Officers		Executive Committee
J. H. Kimberly, president	J. A. Kimberly,	T. E. Nash
N. H. Brokaw	C. W. Howard,	C. A. Babcock
1st vice president		
Geo. A. Whiting,	W. Z. Stuart,	F. Garrison
2nd vice president		
L. M. Alexander	D. R. Davis,	J. S. Van Nortwick
Secretary-treasurer	E. A. Edmunds	

General Paper Company, Rooms 1014-1020 Merchants Loan and Trust Building, Corner Clark and Adams Street, Chicago, Ill.

JULY 5TH, 1900.

From this date the entire product of news, hanging, novel, box lining, manila and fibre papers manufactured by the mills mentioned on opposite page will be sold exclusively through this company.

We shall be pleased to offer any and all of the above grades of paper and quote prices on current business or contracts through personal interview or by letter.

Please address all communications hitherto sent to the individual mills to this office.

GENERAL PAPER COMPANY.

H. M. FRENCH, Manager of Sales.

- 412 Kimberly & Clark Co., Kimberly, Wis.
 Kimberly & Clark Co., Neenah, Wis.
 Kimberly & Clark Co., Quinnesec, Mich.
 Atlas Paper Co., Appleton, Wis.
 Combined Locks Paper Co., Combined Locks, Wis.
 C. W. Howard Co., Menasha, Wis.
 John Edwards Mfg. Co., Port Edwards, Wis.
 Nekoosa Paper Co., Nekoosa, Wis.
 Centralia Pulp and Water Power Co., Centralia, Wis.
 Grand Rapids Pulp and Paper Co., Grand Rapids, Wis.
 Wisconsin River Paper and Pulp Co., Whiting, Wis.
 Wausau Paper Mills Co., Brokaw, Wis.
 Tomahawk Pulp and Paper Co., Tomahawk, Wis.
 Dells Paper and Pulp Co., Eau Claire, Wis.
 Falls Mfg. Co., Oconto Falls, Wis.
 Hennepin Paper Co., Little Falls, Min.

413 Q. Mr. Alexander, I wish you would now refer to the minutes of the stockholders' meeting showing the election of directors and officers at the annual meeting in December, 1902, and showing the increase of the number of the board of directors and who were elected directors at the annual meeting in December, 1902.

Mr. FLANDERS: You have got all that information. It is a matter of time to pick that out.

Mr. KELLOGG: No, I haven't got that information, Mr. Flanders.

Mr. FLANDERS: You have got the answers to the attorney general. You had them here the other day.

Mr. KELLOGG: No, I haven't got those, Mr. Flanders, I beg your pardon.

Mr. Flanders hands book Petitioner's Exhibit 29 to the witness, witness opens same and returns to Mr. Flanders, and book is then submitted to Mr. Kellogg.

Q. Please read the minutes of the stockholders' meeting showing the election of directors.

Mr. FLANDERS: You wish to offer the portions which I read?

Mr. KELLOGG: Yes.

Mr. FLANDERS (reading): Annual stockholders' meeting. Annual meeting of the stockholders of General Paper Company was held in their general offices, 1318 to 1320 Wells building, Milwaukee, Wisconsin, on Tuesday, December 9, 1902, pursuant to notice of

414 such meeting, issued under date of November 24, 1902. The stockholders' meeting organized by electing, on motion of T. E. Nash, seconded by C. W. Howard and duly carried, J. A. Kimberly, chairman, L. M. Alexander, secretary of stockholders' meeting. The following list of stockholders and shares held by each were present in person, being all of the stock except 86½ shares held by J. S. Van Nortwick:

Names.	Shares.
J. A. Kimberly.....	125½
J. C. Kimberly.....	8
H. Babcock.....	5
C. W. Howard.....	37½
L. M. Alexander	60
T. E. Nash.....	97½
F. Garrison.....	33½
E. T. Harmon	42½
Geo. A. Whiting.....	35
C. A. Babcock.....	25
W. L. Edmonds.....	45
A. M. Pride.....	15
D. R. Davis.....	75
E. A. Edmonds.....	36
B. F. Nelson.....	22½

W. Z. Stuart	1
A. C. Bossard	30
C. I. McNair	60
F. M. Aiken	21
W. B. Murphy	28
F. D. Naber	28
M. H. Ballou	54
D. P. Sherry	28
Total	963½

The majority of the stock being present, the meeting proceeded with business as follows:

First, minutes of last meeting read, upon motion of F. M. Aiken, seconded by T. E. Nash, and duly carried, were approved and read."

Mr. FLANDERS: Now Mr. Kellogg, look here.

Mr. Kellogg comes over and looks at the exhibit.

Mr. Flanders continues to read as follows:

(4.) On motion duly made by B. F. Nelson, seconded by D. R. Davis, the following resolution was adopted, 963½ shares voting in favor of the adoption of the same and no shares in opposition thereto:

415 "Resolved that the 4th paragraph of the articles of association of General Paper Company be and hereby is amended to read as follows:

(4.) The general officers of said corporation shall be a president, a vice president, a second vice president, a secretary and a treasurer. There shall be twenty-two directors, who shall each hold his office for one year. Any vacancy in the board of directors arising from death, resignation or other cause, shall and must be filled by the board of directors by the election of a successor who shall hold his office until the next ensuing election. One person shall be eligible to hold the office of secretary and the office of treasurer."

(5.) Upon motion of T. E. Nash, seconded by E. P. Sherry, and duly carried, it was ordered to proceed to the election of a board of directors for the ensuing year and that the secretary of the stockholders' meeting be authorized to cast the ballot of all the stock represented by the following named directors:

J. A. Kimberly.	Geo. A. Whiting.	A. C. Bossard.
J. C. Kimberly.	W. L. Edmonds.	C. I. McNair.
J. S. Van Nortwick.	A. M. Pride.	F. M. Aiken.
C. W. Howard.	D. R. Davis.	W. B. Murphy.
L. M. Alexander.	E. A. Edmonds.	F. D. Naber.
T. E. Nash.	B. F. Nelson.	M. H. Ballou.
F. Garrison.	W. Z. Stuart.	E. P. Sherry.
E. T. Harmon.		

The secretary having cast the ballot for the above persons, the chairman of the stockholders' meeting declared them elected as the board of directors for the ensuing year.

There being no further business, upon motion duly seconded and carried, the stockholders' meeting adjourned.

L. M. ALEXANDER, Secretary."

416 Mr. FLANDERS: I left out the second and third paragraphs.

Q. I will ask you, Mr. Alexander, to please look at the minutes.

Petitioner's Exhibit 29 was handed to the witness by Mr. Flanders.

Q. Did you adopt the part read by Mr. Flanders as your answer to the request to read the minutes of the stockholders' meeting showing the election of directors and the amendment of the articles increasing the board of directors?

A. Yes sir.

Mr. FLANDERS: Of course you will follow your own course, but I can't see the necessity of it. It only takes time. The responsibility of offering portions of this book and refraining from offering others must, in the last analysis, rest upon me; and as long as I read it and omit certain things, I think that fills the bill. But if you prefer the other way, it is only waste of time.

Mr. KELLOGG: I have great respect for your abilities, and always have had, but I must differ from you there. I think the responsibility is with the witness.

Q. Do you adopt that as your answer, Mr. Alexander?

A. Yes sir.

Q. Was there any part of the minutes of that meeting not read?

Mr. FLANDERS: Let me take the book.

Witness hands Petitioner's Ex. 29 to Mr. Flanders.

Mr. KELLOGG: Indicate to the witness the parts omitted.

Mr. FLANDERS: The second paragraph at the foot of page 57, and the third paragraph at the top of page 58 were omitted.

417 (Mr. Flanders has the book in his possession at this time.)

Q. Is that your answer?

A. Yes sir.

Q. Please look at those paragraphs, will you? (To Mr. Flanders:) Will you let Mr. Alexander look at those paragraphs?

Mr. FLANDERS: Why, I don't think I will, no.

Q. Do you decline to look at those paragraphs, Mr. Alexander?

A. Under advice of counsel, I do.

Mr. FLANDERS: You had better put it that your counsel declines to offer them to you.

Q. Do you know what those paragraphs contain?

A. Not without seeing them, no sir.

Q. Do you decline to look at them and see what they contain?

A. Under the advice of counsel, I do.

Mr. KELLOGG: I wish to offer in evidence the first 26 pages of this record book (Petitioner's Exhibit 29) which were shown us by the counsel for the defence the other day.

Mr. FLANDERS: It is objected to as irrelevant, incompetent and immaterial.

Mr. Flanders hands Petitioner's Exhibit 29 to Mr. Kellogg, concealing from view all of the pages of the book except the first 26.

Q. Mr. Alexander, are the minutes of that stockholders' meeting of December 9, 1902, in your handwriting?

A. Yes sir.

Q. You entered them in the book?

A. Yes sir.

418 Q. As secretary of this company?

A. As secretary of the stockholders' meeting.

Q. And you were present at the meeting?

A. Yes sir.

Mr. KELLOGG: Mr. Flanders, will you allow the witness to look at the part of the record of that meeting which was omitted from the reading, to refresh his memory?

Mr. FLANDERS: Respectfully decline.

Q. Do you decline, Mr. Witness, to look at the part omitted from the reading to refresh your recollection?

Mr. FLANDERS: What is the use of asking him whether he will decline to look at something which I have refused to show him?

Mr. KELLOGG: Because this witness has got to answer for his refusal, that is the reason.

WITNESS: Under the advice of counsel I do.

Q. Does the omitted part refer to the business of the General Paper Company with the constituent defendant companies?

Mr. FLANDERS (handing the book to the witness): You may look at it for the purpose of ascertaining that fact, paragraphs second and third.

A. (After inspecting the portion in question.) No sir.

Q. Well, what does it refer to?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

419 Q. You refuse to answer?

Mr. FLANDERS: You can answer it if you want to.

A. Matter pertaining to the business of the General Paper Company.

Q. What business of the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial; and I instruct you that you need not answer.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. Your memory has been refreshed as to its contents, has it?

A. Yes sir.

Q. And you now remember what took place?

A. Yes sir.

Q. And do you refuse to state what took place?

Mr. FLANDERS: I will waive the objection to that, Mr. Alexander.

A. The reports of the sales manager, W. Z. Stuart, and the report of the treasurer.

Q. Please read them in evidence, will you?

Mr. Flanders hands the book to the witness.

A. (Reading from Petitioner's Exhibit 29:) "Paragraph 2. W. Z. Stuart, manager of sales, presented his report which was by unanimous consent approved." That is on page 57. Paragraph 3, page 58: "The report of the treasurer was read, and upon motion W. L. Edmunds, seconded by F. M. Aiken, was accepted and approved, subject to findings of auditing committee, and ordered placed on file." (Handing book back to Mr. Flanders.)

Q. Now you have read the entire records of that meeting, nothing has been omitted?

A. I think not, no sir.

Q. You think there is nothing omitted?

A. I think there is nothing omitted.

Q. Have you Mr. Stuart's report and the report of the treasurer that you refer to?

A. I haven't Mr. Stuart's report. It wasn't ordered placed on file and I haven't that report. The treasurer's report I have.

Q. Is Mr. Stuart's report entered in this record book as a part of the record of that meeting?

A. No sir.

Q. Nor the treasurer's report either?

A. No sir.

Q. Will you please produce Mr. Stuart's sales report?

A. I don't think I can; I haven't it.

Q. Are you not the custodian of it?

A. No sir; I never had that book.

Q. Who is?

A. I couldn't say. It isn't ordered placed on file. I haven't his report.

Q. It was ordered placed on file?

A. It was not.

Q. Oh, it was not?

A. It was not filed with me.

Q. Who has possession of it?

A. I couldn't say.

Q. When did you last see it?

A. I don't think I ever saw his report.

421 Q. How often does the sales agent make a report?

A. Usually reports at the annual meetings of the stockholders.

Q. Does he make a report at the meetings of the directors, also?

A. No sir, I don't think so.

Q. You don't think he ever has made reports at the meetings of the directors?

A. No sir, I don't think so.

Q. At each of the annual meetings he makes a report?

A. Usually, yes sir.

Q. Have you any of those reports?

A. No sir.

Q. In your office?

A. No sir.

Q. Or under your control?

A. No sir, I don't think so.

Q. Where are they filed?

A. I don't know that they are filed at all.

Q. They are preserved are they not?

A. I couldn't say.

Q. You don't know anything about it?

A. No sir.

Mr. KELLOGG: I want to look at those names.

Mr. FLANDERS: I will have to be a little cautious with you.

Mr. KELLOGG: I haven't tried to look at anything.

Mr. FLANDERS: Of course you haven't, but you are trying to whip the devil around the stump through Alexander and me. You are not willing to take my responsibility for it. You want to beware of the Greeks bearing gifts.

Mr. KELLOGG: You needn't be afraid of me.

422 Mr. BECK: You are harsher than we are, Mr. Flanders: we never called the General Paper Company the "devil."

Mr. FLANDERS: I am not afraid of either of you gentlemen except in a lawsuit.

Mr. Flanders hands Mr. Kellogg Petitioner's Exhibit 29, exposing to view certain pages.

Q. Now, Mr. Alexander will you refer to the list of stockholders voted that day, and state what officer each stockholder is of each constituent company. Most of them have been stated before, but as to some of them, I don't see any way out of it except to state them now, and state them as rapidly as you can.

A. J. A. Kimberly, I think, is president of the Kimberly and Clark Company.

J. C. Kimberly is——

Mr. FLANDERS: *Is, or was?*

WITNESS: I don't know what position he occupies with reference to the Kimberly and Clark Company.

Mr. KELLOGG: I have no objection to his stating on his information and belief.

WITNESS: H. Babcock, I think was treasurer of the Kimberly and Clark Company.

C. W. Howard I think was president of the C. W. Howard Company.

L. M. Alexander was president of the John Edwards Manufacturing Company.

T. E. Nash was president of the Nekoosa Paper Company.

F. Garrison was president of the Centralia Pulp and Water Power Company.

423 E. T. Harmon was president of the Grand Rapids Pulp and Paper Company.

George A. Whiting I think was president of the Wisconsin River Paper and Pulp Company.

C. A. Babcock I think was the secretary or treasurer of the Wisconsin River Paper and Pulp Company.

W. L. Edmonds I think was secretary or treasurer of the Wausau Paper Mills Company.

A. M. Pride I think was treasurer or secretary of the Tomahawk Pulp and Paper Company.

D. R. Davis I think was president of the Dells Paper and Pulp Company.

E. A. Edmonds I think was secretary or treasurer of the Falls Manufacturing Company.

B. F. Nelson I think was president of the Hennepin Paper Company.

W. Z. Stuart was sales manager of the General Paper Company.

A. C. Bossard I think was general manager, and he might have been an officer of the Itasca Paper Company.

C. I. McNair I think was general manager of the North-west Paper Company.

F. M. Aiken I think was president of the Petoskey Fibre Paper Company.

W. B. Murphy I think was secretary or treasurer of the Riverside Fibre and Paper Company.

F. D. Naber I think was secretary or general manager of the Wolf River Paper and Fibre Company.

424 M. H. Ballou I think was secretary of the Menasha Paper Company.

E. P. Sherry I think was president of the Flambeau Paper Company.

Recess until two o'clock p. m.

Afternoon Session.

Mr. BECK: Counsel for both sides have agreed to suggest an adjournment until tomorrow morning at ten o'clock.

The hearing was thereupon adjourned until the morning of Friday, May 19, 1905, at ten o'clock.

425

James G. Flanders, Volume 4.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of L. M. Alexander.

Fourth Day, May 19/05.

Page.

Direct examination cont'd. 212
 Cross examination.....
 Re-direct examination
 Re-cross examination

ROBERT S. TAYLOR,
 Special Examiner.

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FRIDAY, May 19, 1905.

310 Federal Building, Milwaukee, Wisconsin.

The hearing was resumed before the examiner, at the above time and place, all parties being present.

The witness L. M. ALEXANDER was recalled, and his direct examination resumed.

Q. The last question I asked was your identification of the stockholders who voted at the annual meeting in 1902. Now, if you will turn to the list of directors elected in 1902; please read the list of directors, as there have been some changes in them, and give the positions of each director, with each mill represented by him, the same you did as to the stock. I want to identify the directors in the same way.

Mr. Flanders hands Petitioner's Exhibit 29 to the witness.

A. J. A. Kimberly, I think, was president of Kimberly and Clark Company.

J. C. Kimberly had no official position with the Kimberly and Clark Company, but was an employee.

J. S. Van Nortwick, I think, was vice president of the Combined Locks Paper Company.

C. W. Howard, I think, was president of the C. W. Howard Company.

L. M. Alexander was president of the John Edwards Manufacturing Company.

T. E. Nash was president of the Nekoosa Paper Company.

427 F. Garrison was president of the Centralia Pulp and Water-Power Company.

E. T. Harmon, I think, was president of the Grand Rapids Pulp and Paper Company.

George A. Whiting, I think, was president of the Wisconsin River Paper and Pulp Company.

W. L. Edmonds, I think, was secretary or treasurer of the Wausau Paper Mills Company.

A. M. Pride, I think, was secretary or treasurer of the Tomahawk Pulp and Paper Company.

D. R. Davis, I think, was president of the Dells Paper and Pulp Company.

E. A. Edmonds, I think, was secretary or treasurer of the Falls Manufacturing Company.

B. F. Nelson, I think, was president of the Hennepin Paper Company.

W. Z. Stuart was general manager of sales of the General Paper Company.

A. C. Bossard, I think, was general manager of the Itasca Paper Company.

C. I. McNair, I think, was general manager of the Northwest Paper Company.

F. M. Aiken, I think, was president of the Petoskey Fibre Paper Company.

W. B. Murphy, I think, was secretary or treasurer of the Riverside Fibre and Paper Company.

F. B. Naber, I think, was secretary or treasurer of the Wolf River Paper and Fiber Company.

428 M. H. Ballou, I think, was secretary or treasurer of the Menasha Paper Company.

E. T. Sherry, I think, was president of the Flambeau Paper Company.

(Witness hands book back to Mr. Flanders)

Q. Will you turn to the annual stockholders' meeting of 1903?

Mr. Flanders hands Petitioner's Exhibit 29 to the witness.

Q. Have you the record of the stockholders' meeting of 1903, December 8, Mr. Alexander?

A. Yes sir.

Q. Will you please read the proceedings of the meeting showing

the election of directors? I mean the list of stockholders first, and the election of directors.

Mr. Flanders finds the place in Petitioner's Exhibit 29, and hands the book to the witness.

A. December 8, 1903.

Q. I want sufficient of the minutes to show as evidence that those stockholders were present and voted, etc.

Mr. FLANDERS: It is admitted for the purposes of this case that the list of stockholders now read by Mr. Alexander were present and voted at that stockholders' meeting.

Q. Read the list.

The witness then read from Petitioner's Exhibit 29 the list as follows:

429	Names.	No. shares.	Present.	Absent.	How represented.
	J. A. Kimberly.....	125	125	.....	In person
	H. Babcock.....	5	5	.....	In person
	J. S. Van Nortwick.....	86½	86½	.....	Proxy, D. S. Reese
	C. W. Howard.....	37½	37½	.....	In person
	L. M. Alexander.....	60	60	.....	In person
	T. E. Nash.....	97½	97½	.....	In person
	F. Garrison.....	33½	33½	.....	In person
	E. T. Harmon.....	42½	42½	.....	In person
	Geo. A. Whiting.....	35	35	.....	In person
	C. A. Babcock.....	25	25	.....	In person
	L. W. Edmonds.....	45	45	.....	In person
	A. M. Pride.....	15	15	.....	In person
	E. A. Edmonds.....	36	36	.....	In person
	B. F. Nelson.....	22½	.....	22½	.....
	W. Z. Stuart.....	1	1	.....	In person
	A. C. Bissard.....	30	30	.....	In person
	C. I. McNair.....	60	60	.....	In person
	F. M. Aiken.....	21	.....	21	.....
	W. B. Murphy.....	28	28	.....	In person
	F. D. Naber.....	28	28	.....	In person
	M. H. Ballou.....	54	54	.....	In person
	E. P. Sherry.....	27	27	.....	In person
	E. A. D. Reynolds.....	1	1	.....	In person
	W. L. Davis.....	75	75	.....	In person
	J. C. Kimberly.....	4½	4½	.....	In person
	F. J. Sensenbrenner.....	4	4	.....	In person
	Total.....	1000	956½	43½	

430 Q. Mr. Alexander, were each one of those stockholders connected with one of the defendant corporations in the same capacity as heretofore given by you?

A. I think so, yes sir.

Mr. FLANDERS: Mr. Stuart was only connected with the General Paper Company.

WITNESS: Well, that has been given.

Mr. KELLOGG: That has been given, I think.

If there are any exceptions there—

A. E. A. D. Reynolds, I think, was general manager of the Flambeau Paper Company, and F. J. Sensenbrenner was connected with the Kimberly and Clark Company. I do not know what his official title was at that time.

Q. Was George W. Mead a new man?

A. He was not.

Q. Who was he connected with?

A. The Consolidated Water Power and Paper Company, as secretary.

Q. As secretary?

A. Yes sir.

Q. I guess those are all the new men.

Mr. FLANDERS: Let me see the book a minute. (Mr. Flanders takes the book, Petitioner's Exhibit 29, and exhibits it to Mr. Stuart.)

Mr. FLANDERS: Mr. Mead's name is not there. (Handing book back to witness.)

Q. Oh, isn't it?

A. No sir.

Q. Oh, I beg your pardon. Mr. Mead's name doesn't appear there?

A. No sir.

Q. Now, please read the minutes showing the election of directors and the names of the directors.

Witness hands the book, Petitioner's Exhibit 29, to Mr. Flanders, who finds place and returns book to witness.

431 WITNESS: On page 69, item 10.

Mr. FLANDERS: Now, you read what I showed you to read.

WITNESS: I beg your pardon.

Mr. FLANDERS: Excuse me for saying so, but as I am charged with all the sins of this examination up to date, I want to continue to bear them, and instead of making any statement about it at all, you read that portion of the minutes that I pointed out to you.

WITNESS (reading): "Upon motion, C. W. Howard, seconded by W. L. Edmonds and duly carried, it was ordered to proceed to the election of the board of directors for the ensuing year, and that the secretary cast the ballot of all shares present for the following directors:

J. A. Kimberly
J. S. Van Nortwick
C. W. Howard
L. M. Alexander
T. E. Nash
F. Garrison
E. T. Harmon
Geo. A. Whiting
C. A. Babcock

W. L. Edmonds
A. M. Pride
E. A. Edmonds
B. F. Nelson
W. Z. Stuart
A. C. Bossard
C. I. McNair
F. M. Aiken
W. B. Murphy

F. D. Naber
M. H. Ballou
E. P. Sherry
E. A. D. Reynolds
W. L. Davis
J. C. Kimberly
F. J. Sensenbrenner

Ballots so cast and declared elected by the chairman."

Witness hands book back to Mr. Flanders.

Mr. KELLOGG: How many are there?

Mr. FLANDERS (after counting same): Twenty-five.

Page 202 of the record is referred to, for the purpose of checking these names with the names given yesterday.

432 Mr. KELLOGG: Now who are the new ones?

Mr. FLANDERS: C. A. Babcock, E. A. D. Reynolds, and F. J. Sensenbrenner are new. D. R. Davis' place is filled by W. L. Davis.

Q. C. A. Babcock occupied what position?

A. I think he was secretary and treasurer of the Wisconsin River Paper and Pulp Company.

Q. And W. L. Davis?

A. W. L. Davis, I think, was the vice president of the Dells Paper and Pulp Company.

Q. He took the place of D. R. Davis, who died?

A. Yes sir.

Mr. FLANDERS: As a matter of fact, I am informed that W. L. Davis was the president instead of the vice president.

Mr. KELLOGG: All right; I have no objection to that statement at all. That is accepted as correct.

Q. Was the number of directors increased at that meeting?

Mr. FLANDERS: Yes, it was.

Mr. KELLOGG: Please have read the minutes showing the increase of directors.

Mr. FLANDERS (reading): "Upon motion of L. M. Alexander and seconded by E. A. Edmonds, the following resolution was adopted, 956½ shares voting in favor of the adoption of same and no shares voting in opposition thereto. Resolved, That the fourth paragraph of the articles of association of the General Paper Company be and hereby is amended to read as follows:

(4.) The general officers of said corporation shall be a president, a vice president, a second vice president, a secretary and a treasurer. There shall be twenty-five directors who shall each hold his office for one year. Any vacancy in the board of directors arising from death, resignation or other cause shall and must be filled by the board of directors by the election of a successor, who shall hold his office until the next ensuing election. One person shall be eligible to hold the office of secretary and the office of treasurer."

Q. Do you adopt that as your answer to the question indicated, Mr. Alexander?

A. I do.

Q. Now are there any further proceedings of the meeting of the stockholders relating to the resolution for increasing the number of directors except as read?

Mr. FLANDERS: No.

Q. Is that your answer?

A. No.

Q. Now Mr. Alexander, the increase of the number of the board of directors from seventeen to twenty-two at the meeting of December 1902, and the increase in the board of directors from twenty-two to twenty-five at the meeting of December 8, 1903, was made for what purpose?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

Q. Will you please answer, Mr. Alexander?

Mr. FLANDERS: If you know, what the purpose of the stockholders was in increasing the board of directors of their company.

A. I think it was to enlarge the scope and representations of the General Paper Company?

434 Q. So as to give each corporation which would make a contract with the General Paper Company to make it its selling agent a director, was it not?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and grossly leading, and assuming facts as shown in the case which have not been shown; and I want to enter my objection to the putting of leading questions to the witness, and for the further reason that it calls upon the witness to give the mental purposes and processes of the stockholders of this company which he is an incompetent witness to give. My objection on the ground of leading questions is that this witness is the witness of the Government and there is nothing in the record that warrants departing from the ordinary rules of examination.

Mr. KELLOGG: I think I have a right to put leading questions to this witness as a hostile witness, as the testimony has shown.

Mr. FLANDERS: I object to it for that reason, and I object to the statement that he is a hostile witness, and insist that the record fails to support that statement, and that the witness has fully and fairly answered the questions of counsel, except when he has been directed not to do so.

A. If the stockholders and directors of the General Paper Company desired to do that, yes.

Q. That is what was actually done, is it not?

Mr. FLANDERS: That is objected to as leading, suggestive and incompetent, irrelevant and immaterial.

Mr. KELLOGG: Well, I will change the question.

435 Q. Was that what was done?

Mr. FLANDERS: The same objection.

A. I think the records are the best evidence of what was done.

Q. Well, now, Mr. Alexander, we may differ as to that. Will you please state whether, as each corporation made a contract with the General Paper Company, a director was actually elected from either an employee or an officer of that company, and that that was the object in increasing the number of the board?

Mr. FLANDERS: I object to that question as irrelevant, incompetent and immaterial, as leading and as a double barreled question. And I respectfully request the counsel to divide his question so that I can object to each barrel separately.

Mr. KELLOGG: Well, you had better object to the double question.

Mr. FLANDERS: Well, then I object to the first barrel, on the ground that the contracts have all been introduced in evidence showing the several mills which made contracts with the General Paper Company, and the dates when such contracts were made, and that the names of the additional directors have been given and the corporation with which each was connected, and that so far as the first barrel is concerned it has been fully answered by the best evidence, already in the record. Now, as to the second barrel, I object for the reason that the witness is not a competent witness to testify as to the object, motive or purpose of the stockholders of the
436 General Paper Company aggregating twenty-five (or thereabouts) in number, of which stockholders he was simply an individual. Those are my objections in sections.

Q. Will you please answer the question?

Mr. FLANDERS: Well, read it to him, and answer the first barrel of it first.

The examiner read the first part of the question as follows: "Will you please state whether as each corporation made a contract with the General Paper Company, a director was actually elected from either an employee or an officer of that company."

Mr. FLANDERS: Answer that.

WITNESS: In most cases, yes.

Mr. FLANDERS: Now read him the last half of the question.

The question — then read: "And that that was the object in increasing the number of the board?"

Mr. FLANDERS: If you know.

A. I think it was.

Q. Wasn't it a fact that in every case each mill which made a contract with the General Paper Company, making it a selling agent, had a director from among its officers or employees?

A. Yes sir.

Mr. FLANDERS: Now that isn't true is it, Mr. Alexander? Was it true in relation to the Consolidated Water-Power and Paper Company and the Rhinelander Paper Company?

WITNESS: At the present time, yes sir.

437 Mr. FLANDERS: Well, read the question and his answer.

The question and answer were read as follows:

Q. "Wasn't it a fact that in every case each mill which made a contract with the General Paper Company, making it a selling agent, had a director from among its officers or employees?"

A. Yes sir."

WITNESS: I misunderstood the question, then.

Mr. KELLOGG: That relates to all the time, any of the time, present time as well as any other.

Mr. FLANDERS: As far as the Rhinelander Paper Company is concerned, the only manner in which it was represented on the board of directors was Mr. E. A. Edmonds, wasn't it?

WITNESS: Yes.

Mr. FLANDERS: And he had been elected as a director and was a member of the board before the Rhinelander Paper Company was organized and while he was connected with the Falls Manufacturing Company?

WITNESS: The Falls Manufacturing Company.

Mr. FLANDERS: Isn't that the fact?

WITNESS: Yes sir.

Q. Now the contract shows, as introduced in evidence, Petitioner's Exhibit 98, that the Rhinelander Paper Company made its contract with the General Paper Company August 31, 1904. You can state whether that is correct (showing witness paper.)

Mr. FLANDERS: Well, that is admitted to be correct. I remember the date myself.

Q. At the 1904 annual meeting held in December, he was re-elected as an officer of the Rhinelander Paper Company, wasn't he?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and leading and calling for a conclusion of law, in relation to which the witness is not competent to testify.

Mr. KELLOGG: Well then, I will change the question.

Q. He was actually an officer of the Rhinelander Paper Company when he was re-elected in December, 1904, wasn't he?

A. He was the general manager.

Q. Yes, the general manager. That is right. Now referring to this stockholders' meeting of December, 1903, which you have been reading from, will you state whether you read the entire minutes of the meeting of the stockholders?

Mr. FLANDERS: We admit that he did not.

Q. Did any other part of the record of the proceedings of that meeting relate in any way to any corporation defendant making the General Paper Company its selling agent or making a contract therefor?

A. I don't recall.

Q. Will you look and see if such was the case?

Mr. FLANDERS: Make a note that counsel for the General Paper Company holding the record book in his hands has examined it and states that it does not.

Mr. KELLOGG: I think the witness should examine the book and state that fact himself, and I request him to do it.

Mr. FLANDERS: As far as I know, my statement will go on that subject.

439 Mr. KELLOGG: Do you refuse to allow him to do it?

Mr. FLANDERS: I certainly do.

Q. Does the proceeding of that meeting show any action taken upon the report of the sales agent of the General Paper Company?

Mr. FLANDERS: The counsel for the General Paper Company now holding the book of records in his hands asks the counsel if he wants to hear what is said on that subject?

Mr. KELLOGG: Yes.

Mr. FLANDERS: If you want to hear it I will read it.

Mr. KELLOGG: Very well, read it.

Mr. Flanders read as follows:

"The report of manager of sales, W. Z. Stuart, was read and upon motion of George A. Whiting, seconded by E. A. Edmonds, and duly carried, the report was accepted and ordered placed on file."

Q. Have you that report?

A. I don't think so.

Q. Did you have an auditing committee?

A. Yes sir.

Q. Did the auditing committee have anything to do with the report of the sales agent?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I think not.

Q. Simply the treasurer's report?

A. Yes, I think so.

Q. Have you the treasurer's report that was made to this meeting?

A. No sir, I haven't it.

Q. Is it in your custody?

A. It usually is, yes sir.

Q. Does that report contain the result of all the sales of
440 paper made by the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and on the further ground that the report is the best evidence; and I think I will instruct the witness that he need not answer that question.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. What subject does the report of the treasurer deal with, with-

out going into the details of it or stating the substance of it; so as to identify it?

Mr. FLANDERS: That is objected to for the same reasons; and the same advice is given to the witness.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. You haven't read all of the minutes of the meeting,—of this general meeting of the stockholders?

Mr. FLANDERS: He hasn't read any of it, but we admit that the counsel for the General Paper Company has not.

Q. Does the balance of the meeting refer to any business between the General Paper Company and the constituent mills making contracts with it as selling agent?

Mr. FLANDERS: That is objected to as irrelevant, immaterial, incompetent and on the ground that the record is the best evidence. (To the witness:) You need not answer that question.

Q. You refuse to answer it?

A. Under advice of counsel, I do.

Q. Will you please turn to the annual meeting of December 1904 and read the proceedings of the meeting showing the stockholders present and the election of the board of directors at that meeting.

441 Mr. FLANDERS: Now, Mr. Kellogg, if you wish me to do that, I shall be pleased to do it for you, but we might just as well understand ourselves, because this has been gone over three or four times. I do not intend to allow a fishing expedition to go into things that are not pertinent to this case. It is not the season of the year in which we engage in that practice.

Mr. KELLOGG: Mr. Flanders, I don't desire to go into any fishing expedition to find out what there is in this book containing the records of the meeting of the board of directors and stockholders of the General Paper Company; I simply desire, and I think I have the right to show, the proceedings of those meetings so far as it bears upon this case.

Mr. FLANDERS: We don't dispute you about that at all. The only difference between us is as to what bears upon this case. Now we are not going to turn our business inside out to the Government of the United States or the government of any other country unless we are obliged to by the orders of our superiors; and so far as your questions have called for things which were germane to this case, the records have been submitted to you, and we shall continue to do so. And I say to you now, that if you want to know or see the portions of the record of the meeting of 1904 showing the stockholders present and the election of directors, I shall be pleased to submit it to you or read it.

Mr. KELLOGG: Well, I understand that the counsel refuses to allow the witness to take the book for the purposes I have
442 designated, and therefore I accept the counsel's offer to read from the record that portion thereof relating to the election of the directors, including the stockholders present, and the shares represented by each.

Mr. FLANDERS: I will not only read it, but I will submit it to your inspection, if you want to see it personally, and that is meant in good faith, and I don't mean by that to intimate that you distrust the correctness of my reading.

Mr. KELLOGG: Not the slightest. I would just as soon you would read it.

Mr. FLANDERS: All right.

(Reading :) Annual stockholders' meeting. The annual meeting of the stockholders of the General Paper Company was held in their general offices, 1318-1320 Wells building, Milwaukee, Wisconsin, on Tuesday, December 13, 1904, pursuant to by-laws and notice issued under date of November 16, 1904. In the absence of J. A. Kimberly at the time set for calling to order, the meeting was called to order by W. Z. Stuart at ten a. m. The following list of stockholders and shares represented by each were present:

Name.	No. shares.	Present.	Absent.	Remarks.
J. A. Kimberly	125	125	.....	.....
J. Babcock	5	.....	5	.....
J. S. Van Nortwick	86½	86½	.....	Proxy.
C. W. Howard	37½	x	37½	x
L. M. Alexander	60	60	x	x
T. E. Nash	97½	97½	x	x
F. Garrison	33½	33½	x	x
443 E. T. Harmon	42½	42½	.....	.....
Geo. A. Whiting	35	35	.....	.....
C. A. Babcock	25	25	.....	.....
W. L. Edmonds	45	45	.....	.....
A. M. Pride	15	15	.....	.....
E. A. Edmonds	34	34	.....	.....
B. F. Nelson	22½	22½	.....	.....
W. Z. Stuart	1	1	.....	.....
A. C. Boesard	30	30	.....	.....
O. I. McNair	60	60	.....	.....
L. H. Cheesman	21	21	.....	.....
W. B. Murphy	28	28	.....	.....
F. D. Naber	28	.....	28	.....
M. H. Ballou	53	53	.....	.....
E. P. Sherry	27	27	.....	.....
E. A. D. Reynolds	1	1	.....	.....
W. L. Davis	75	75	.....	.....
J. C. Kimberly	4½	4½	.....	.....
F. J. Sensenbrenner	4	4	.....	.....
George W. Mead	1	1	.....	.....
J. H. Delbridge	1	1	.....	.....
S. Elmer Smith	1	1	.....	.....
	1000	929½	70½	

Q. Except where changes in the stock list occurred between the annual meeting of 1903 and the one of 1904, did each stockholder,

444 at the time of the annual meeting 1904, represent one of the defendant mills in the same capacity as he did in 1903?

A. You mean, did he hold the same official position or as manager?

Q. Did he hold the same official position, or as manager, or as agent, of the defendant company, respectively, as he did in 1903? (The two may be taken as part of the same question.)

Mr. FLANDERS: I should think that might be confusing. I suppose what you want to know is whether, except where changes appear, the men who were stockholders in 1903 were connected with the same companies in 1904. They might not have the identical official position, or they might have changed the office, and I don't know whether he would know that. If that is at all material to you, you can pursue the inquiry just as you want to.

Mr. KELLOGG: If he knows it, I would like to have him state it.

Mr. FLANDERS: Very well.

A. I think, as far as I know, they sustained the same official relation to the mills as they did in 1903.

Q. Now will you please state the changes, what new stockholders came in, and what official position (if any) they occupied with any of the defendant mills?

Mr. FLANDERS: You can check this off yourself, Mr. Kellogg, in a minute.

The book is exhibited to counsel for the petitioner, and Mr. Kellogg and Mr. Olds compare the two lists.

445 Q. I notice that F. M. Aiken is not in the list of stockholders in 1904, but that L. H. Cheesman is, holding the same number of shares. Please explain that.

A. Mr. Aiken transferred his shares to Mr. Cheesman.

Q. Do you know whether Mr. Aiken left the Petoskey Fibre Paper Company between the annual meeting in 1903 and the annual meeting in 1904?

A. No, I think he left it sometime before 1903.

Q. And who took his place, if you know?

A. Mr. Cheesman was elected president of the Petoskey Fibre Paper Company.

Q. And at the annual meeting in 1904 of the General Paper Company Mr. Cheesman was, at that time, present, as you understand it.

A. As I understand it, yes sir.

Q. I notice in the stock list of 1904 that George W. Mead had one share. With what company was he connected and in what capacity.

A. I think he is secretary or treasurer of the Consolidated Water-Power and Paper Company.

Q. J. H. Delbridge had one share. In what capacity was he connected with any of the defendant companies?

A. I think he was general manager of the Falls Manufacturing Company.

Q. S. Elmer Smith: In what capacity was he connected with any of the defendant companies?

A. I think he was president of the Menasha Paper Company.

Q. At this time, December 13, 1904, what capacity did E. A. Edmonds occupy with any of the defendant companies?

A. I think he occupied the same official capacity with the Falls Manufacturing Company that he always did and in addition to that

I think he was the general manager of the Rhinelander 446 Paper Company.

Q. Do you know whether he is still in an official capacity with the Falls Company?

A. Whether he was then, you mean?

Q. No, whether he still is, if you know.

A. Yes sir, I think he is secretary or treasurer of that company.

Q. And he is still connected with the Rhinelander Paper Company?

A. I think he is the general manager of the Rhinelander Paper Company, yes sir.

Q. I notice by the stock register that M. H. Ballou transferred one share to S. E. Smith. Are they connected with the same company.

A. I think they are, yes sir.

Q. Please read that part of the minutes showing the election of the board of directors.

Counsel for the General Paper Company reads as follows from the record of the stockholders' meeting of December 13, 1904:

"Upon motion T. E. Nash, seconded by E. A. Edmonds, and duly carried, the secretary was authorized to cast the ballot of all the stock represented for the following persons as directors for the ensuing year:

J. A. Kimberly	W. L. Edmonds	F. D. Naber
F. J. Sensebrenner	A. M. Pride	M. H. Ballou
L. M. Alexander	J. H. Delbridge	E. P. Sherry
T. E. Nash	B. F. Nelson	W. L. Davis
F. Garrison	A. C. Bossard	E. A. Edmonds
E. T. Harmon	C. I. McNair	George W. Mead
George A. Whiting	W. J. Murphy	

447 Ballots so cast and above declared elected."

Mr. FLANDERS: There were others elected subsequently. Following right after the list of directors which has been read is the following:

"Upon motion T. E. Nash, seconded by W. L. Edmonds, and duly carried, the secretary was authorized to cast the ballot of all stock

represented for W. Z. Stuart and C. A. Babcock for directors for the ensuing year. Ballot so cast and they were declared elected.

"Upon motion B. F. Nelson, seconded by George A. Whiting, and duly carried, the secretary was authorized to cast the ballot of all the stock represented for C. W. Howard as a director for the ensuing year. Ballots so cast and Mr. C. W. Howard declared elected.

"On motion W. L. Edmonds, seconded by M. H. Ballou, and duly carried, the secretary was authorized to cast the ballot of all the stock represented for J. S. Van Nortwick as a director for the ensuing year. Ballot so cast and Mr. Van Nortwick declared elected.

"Upon motion George A. Whiting, seconded by W. L. Edmonds and duly carried, the secretary was authorized to cast the ballot of all the stock represented for S. Elmer Smith as a director for the ensuing year. The ballots so cast and Mr. Smith was declared elected."

That makes twenty-five, doesn't it?

Mr. KELLOGG: That makes twenty-five. We would like to check them over. I will call the list as they appeared in the 1903 meeting, and will ask the examiner to check with the 1904 meeting. (This was done.)

448 Q. E. A. D. Reynolds went out and was not elected in the last board. What mill was he connected with?

A. He was business manager of the Flambeau Paper Company.

Q. Who was elected to take his place? (I will give you the names of the three: Delbridge, Mead and Smith.)

A. Neither one of those three.

Q. Was Sherry connected with the Flambeau Paper Company?

A. Mr. Sherry is the president, I think, of the Flambeau Paper Company.

Q. F. M. Aiken went out and was not re-elected. Who was elected from the same mill? Mr. Cheesman?

Mr. FLANDERS: Mr. Cheesman is not in the last list.

Mr. KELLOGG: Before, Aiken went out and Cheesman went in.

Mr. FLANDERS: That was at a stockholders' meeting; that was as a stockholder. He is not a director.

Mr. KELLOGG: Mr. Aiken took the place of Mr. Cheesman, did he?

Mr. FLANDERS: No. Cheesman is not on that list. Look here, Mr. Kellogg. (Showing Mr. Kellogg book.)

Q. Then, at the last board meeting there was no one elected from the Petosky Fibre Paper Company.

A. There was no one elected a director of the General Paper Company in place of Mr. Cheesman or Mr. Aiken.

Q. Is there on the board now any person in any way connected with the Petosky Fibre Paper Company?

A. No, I don't think there is.

Q. With what mill, and in what capacity was George W. Mead connected?

A. Mr. Mead is secretary or treasurer of the Consolidated Water-Power and Paper Company, I think.

449 Q. S. E. Smith?

A. Mr. Smith, I think, is president of the Menasha Paper Company.

Q. J. H. Delbridge?

A. Mr. Delbridge, I think, is the general manager of the Falls Manufacturing Company.

Q. Mr. Alexander, do you know whether the Petoskey Fibre Paper Company, through Mr. Cheesman, has refused to renew its contract with the General Paper Company?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. He has not renewed any contract with the General Paper Company.

Q. Has he not refused to do so?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. I don't think he has refused to do so. He has changed the manufacture of his product on to something different from what he was manufacturing before.

Q. What was he manufacturing before?

A. He was manufacturing fibre paper.

Q. What is he manufacturing now?

A. Bags.

Q. Isn't he manufacturing any fibre paper?

A. He may be manufacturing some now but—

Q. Isn't he manufacturing print paper?

A. No sir, I don't think so.

Q. Well, as a matter of fact, wasn't it known at that meeting, by yourself and others present, and at the annual meeting in 1904, that Mr. Cheesman had up to that time refused to renew his contract?

450 Mr. FLANDERS: Objected to for the same reasons.

A. No, I don't think he had ever refused, so far as my recollection goes, excepting upon the grounds which I have stated.

Q. I didn't ask any grounds. Had he not refused up to that time to make a new contract with the General Paper Company?

A. I think up to that time he hadn't made any contract.

Q. And he had been approached to make a contract, hadn't he?

Mr. Flanders interposes the same objections.

A. Yes sir, I think he was talked to about it, with all—

Q. And had declined?

A. I think so.

Q. And isn't that the reason he was left off the board?

Mr. FLANDERS: That is objected to as irrelevant, incompetent,

immaterial, calling for the mental processes of the board of directors of which the witness was only one, and a subject in relation to which the witness is not competent to state.

A. I think he did not desire to be on the board.

Q. Was he not left off the board because he had not made a new contract with the company?

A. That might have been the reason.

Q. Was that not discussed at the meeting?

A. I think it was, yes sir.

Q. Was it not stated at the meeting that he would not make a new contract?

Mr. FLANDERS: Same objection.

A. I don't recall whether that was stated at the meeting or not.

Q. What was the substance of what was stated by any director in your presence about Mr. Cheesman's contract for the coming five years?

Mr. FLANDERS: That is objected to for the same reason.

A. I don't recall just what was stated.

Q. But you do recall it was discussed?

A. Yes sir, I think it was.

Q. And that it was stated that he had not renewed it?

A. Yes sir; that is the fact that it had not been renewed at that time.

Q. And that he had been approached and had refused to renew it.

Mr. FLANDERS: Same objection, and as leading.

A. I think so.

At this time, and by consent of all parties, the hearing before the examiner was continued, and the witnesses excused, until Tuesday, May 23, 1905, at ten o'clock, at room 310 Federal building, Milwaukee, Wisconsin.

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James G. Flanders, Volume 5.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota,
Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of L. M. Alexander.

May 23rd, 5th Day.

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ROBERT S. TAYLOR,
Special Examiner.

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TUESDAY, May 23, 1905.

310 Federal Building, Milwaukee, Wisconsin.

The hearing was resumed, pursuant to adjournment, in room 413 Federal building, all parties being represented.

The witness L. M. ALEXANDER was recalled and his direct examination resumed, as follows:

Examined by Mr. KELLOGG:

Q. Mr. Alexander, I believe you testified the other day that thirty per cent. of seventy-five per cent. of the total capital stock of this company was paid on or about July 5, 1900. Now I ask you if the statement which I show you, (marked for identification Petitioner's Exhibit 102) shows the date of payment and the total number of shares of the stock of the General Paper Company. (Submitting Petitioner's Exhibit 102 to Mr. Flanders.)

Mr. FLANDERS: Now that is not an exhibit that Mr. Alexander made up?

Mr. KELLOGG: Yes, that is the one he made and gave to me.

Mr. FLANDERS (to the witness): Was that made up by you?

WITNESS: I had that made up, yes sir.

Mr. Kellogg's question was read.

A. Yes sir, I think it does.

Mr. FLANDERS: Let me see it, Mr. Alexander.

Q. Did you make up this statement, Mr. Alexander?

A. I had it made up.

Q. It is correct, as you understand it?

A. I think so, yes sir; as far as a statement taken from the books.

Q. This shows, also, the amount agreed to be taken by each
454 of these parties at the meeting of June 18, 1900, does it not?

Mr. FLANDERS: That list is compiled from the books, isn't it?

WITNESS: From the payments, the books.

Mr. FLANDERS: And the only thing you know about its showing the amount that was agreed to be taken is what is stated in that meeting of June 18, 1900, isn't it?

WITNESS: Yes sir.

Mr. Kellogg's question was read, and the following added thereto: "This is the same list of stockholders?" I show Mr. Alexander page 59 of his testimony in the case."

Mr. FLANDERS: The same list of stockholders as appears in the meeting of June 18, 1900?

Mr. KELLOGG: June 18, 1900, yes.

Mr. FLANDERS: If you have checked that over——

WITNESS: Yes sir, it is the same.

Q. Now I notice by this that Mr. Nelson,—his money was not received until August 16, 1901. Was it paid by anybody else in the meantime and can you explain that discrepancy? As I understand, the total amount of \$22,500 was paid some time during the month of July. If I am mistaken please correct me (handing witness Petitioner's Exhibit 102).

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. This amount of money, represented as having been paid by Mr. B. F. Nelson, was never paid in or received by the General Paper Company until the date shown on this list.

Q. It was not first paid by some other company and then
455 refunded to that company, is what I meant.

A. No sir, I think not.

Q. I noticed at the stockholders' meeting December 10, 1901, that the stock was voted in the same amounts by each individual as appears in this list of payments, with the exception of Mr. Nelson's. Have you checked it up to see whether that is correct or not?

A. I think that Mr. Nelson December 10, 1901, or at that annual meeting, voted the full amount of stock.

Q. Perhaps he did. Then the list is the same identically as was voted at the December 10, 1901 annual meeting?

Mr. FLANDERS: Well, now, just wait a minute.

Mr. KELLOGG: Mr. Flanders, I am not trying to catch the witness. I am just laying the foundation for asking another question, and if he makes any mistake as to this checking up he can correct it.

Mr. FLANDERS: All right. The only thing is you know that it is impossible for a man to carry in his head all these details.

Mr. KELLOGG: Very difficult.

Mr. FLANDERS: Not only difficult, it is impossible.

Mr. KELLOGG: Well, I am not trying to catch the witness nor test his memory. Just simply laying the foundation for following questions.

The last question was read.

Mr. FLANDERS: It appears that you so stated, Mr. Alexander. Do you know that to be the fact?

WITNESS: I don't know more than what the record states there. I supposed I had stated from the record.

Mr. FLANDERS: No, you didn't, because the testimony
456 shows that the book was not in your possession and that it was in mine.

Mr. KELLOGG: Witness is shown record, bottom of page 103 and top of page 104. I will withdraw the whole question.

Q. Now Mr. Alexander, was the payment in December 1901, when the balance of the stock was paid for, made on the same basis as the first payment by the same parties?

A. The payment on stock in 1901 was made on the basis of the actual subscription list.

Q. Was it made on the same basis, the same number of shares to each party that the first payment was made?

A. I think not, because it does not agree with the actual number of shares that appears in the actual subscription list.

Q. You refer to the actual subscription list, the subscription list that appears on pages 16 and 17 of the May 26, 1900 meeting?

A. Yes sir.

Q. Do your books show the exact date of those payments and the number of shares paid for by each person or corporation?

A. I think the books show the actual number of shares and the amount intended to be covered by the payments.

Q. Have you those books here now?

A. They are in Mr. Flanders' possession; I couldn't say whether they are in the room or not.

(Second last question read to Mr. Flanders.)

Mr. FLANDERS: Have you any memorandum here from which you can tell that, Mr. Alexander.

WITNESS: I don't think I have, Mr. Flanders.

Mr. FLANDERS: From what books could you ascertain it?

457 WITNESS: From the journal and the ledgers.

Mr. FLANDERS: Any objection to my speaking to him?

Mr. KELLOGG : Not at all.

(Mr. Flanders and the witness confer privately.)

Mr. FLANDERS : Those books are in the marshal's vault. I guess we can go in and get them.

(Mr. Brace and Mr. Flanders go for the books.)

Mr. FLANDERS (after returning) : Can't you go along with something else, Mr. Kellogg ? Some of those books are in and some are not.

Mr. KELLOGG : Oh yes, we will pass that matter for the present.

Q. Mr. Alexander, who is Mr. A. C. Allen ?

A. A. C. Allen is one of the salesmen of the General Paper Company.

Q. Traveling salesman, you call him ?

A. Yes sir.

Q. He has been how long ?

A. Very nearly the life of the company.

Q. Mr. Mendsen, I don't remember his first name ?

A. Mr. E. B. Mendsen.

Q. Yes.

A. He is one of the salesmen, until recently ; I believe he is now one of the assistant sales managers.

Q. Who are the others ?

A. L. E. Nash, Thomas H. Martin.

Q. A man by the name of Reynolds ?

A. Mr. E. A. D. Reynolds was at one time salesman ; he has not been for some years.

Q. Have you had, during this time of the existence of the General Paper Company, any other salesmen ?

A. Our city salesman at Chicago, George Lockhart.

Q. Did Mr. Mendsen and Mr. Allen have authority to
458 make contracts with papers for print paper ?

Mr. FLANDERS : That is objected to as irrelevant, incompetent, immaterial and calling for a conclusion.

Question withdrawn.

Q. Is there any record of the board of directors or executive committee or stockholders of the General Paper Company showing the authority of these sales agents or assistant sales managers or the sales manager ?

A. I think not.

Q. Have you examined the record book to see whether there is such authority or not ?

A. Not with reference to that particular thing, but I don't think there is.

Q. Are their duties defined either by resolution or a by-law or any action of the directors, executive committee or stockholders ?

A. I think not. They are directly under the general manager of sales.

Q. Are the duties of the general manager of sales prescribed or fixed by the by-laws, the action of the executive committee or the board of directors or stockholders of the corporation?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I think not, only in a general way.

Q. In a general way?

A. Yes.

Q. Can you turn to the record book and show us the authority of the general manager of sales as fixed by the board of directors or executive committee?

Mr. FLANDERS: See if you can find it in the board of directors' meeting. (Handing witness Petitioner's Exhibit 29, which the witness examines.)

459 A. To the best of my recollection, I don't think there was any special ruling or any ruling made of record in regard to the duties of the general manager of sales.

Mr. Flanders takes Petitioner's Exhibit 29 and looks through same.

Q. Or of the assistants or of the salesmen.

A. No sir, I think not.

Q. When was your first sales manager elected? At what meeting of the board of directors?

A. I don't think he was elected at all. He was chosen by either a special committee or the executive committee.

Q. When?

A. About the first of July, 1900.

Q. Will you turn to the minutes and show his appointment or election, whatever you call it.

Mr. FLANDERS: If you find it point it out to me. (Handing witness Petitioner's Exhibit 29, which the witness examines, and Mr. Flanders takes the book, and after covering parts of the pages, exhibits a certain portion to Mr. Kellogg.)

Q. Please read the record showing the appointment of the sales manager and at what meeting the appointment took place.

Mr. FLANDERS: It is at the directors' meeting of May 26, 1900. (Reading) "On motion duly carried, a committee composed of the officers elect was appointed with powers *ad interim*, to select a manager of sales, suitable offices in Chicago, and do all such other work necessary as would facilitate the general working details, such committee being J. A. Kimberly, N. H. Brokaw, George A. Whiting and L. M. Alexander."

460 Q. Do the records of the board of directors' meeting show any report of this committee?

A. I don't think so.

Mr. KELLOGG: Will you let us examine the record to see whether it does or not, Mr. Flanders?

Mr. FLANDERS: Let you?

Mr. KELLOGG: Yes.

Mr. FLANDERS: No.

Q. Do you know whether it does or not?

A. To the best of my recollection I don't think it does.

Q. Who was appointed by that committee the first sales manager?

A. H. M. French.

Q. How long did he remain sales manager?

A. I think about a year.

Q. Who was the next sales manager?

A. W. Z. Stuart.

Q. How long did he remain sales manager?

A. From the time that he was elected until now.

Q. He is present sales manager? He has charge of the sales?

A. I withdraw that answer, or modify it by saying that up to the time he was elected second vice president.

Q. When was that?

A. I think that was at the December meeting 1903.

Q. Who was appointed at that time his successor as sales manager?

A. Mr. J. A. Davis.

Q. Is he still sales manager?

A. Yes sir.

Q. State what the duties of the sales manager are.

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and not shown that the witness knows what they are.

Q. Do you know what his duties are?

A. In a general way, yes sir.

461 Q. What are they?

Mr. FLANDERS: Same objection by defendant.

A. To secure orders for paper to be manufactured.

Q. Well, to sell the products of these mills, isn't it?

A. Yes sir.

Mr. FLANDERS: Well, just wait a minute. I move to strike that question and answer out: The question, for the reason that it assumes a fact not proven in the case, and not in accordance with the facts. I would like to ask you, Mr. Alexander, a question, if you have no objection.

Mr. KELLOGG: Now I object to your testifying for Mr. Alexander.

Mr. FLANDERS: All right. Now then, one moment. I instruct you, Mr. Alexander, to confine your testimony to the facts that you know, and not go beyond that.

Q. Do any of the meetings of the board of directors, other than

the records you have read in evidence, or of the executive committee regulate or state what the authority of the sales manager is.

A. I don't think so.

Q. Well, do you know whether it does or not?

A. I don't think that it does. The contracts tell, or the most do, between the mills and the General Paper Company.

Q. Is there any record of the board of directors' meeting during the year 1900 designating the authority in any way of the sales manager?

A. I don't think so.

Q. Please look at the board of directors' meetings, 1900, and state whether any such record appears.

Mr. Flanders hands the record book to the witness, and the same is examined by the witness.

462 WITNESS: You mean other than what has been read?

Q. Yes.

A. No sir, I don't find anything.

Q. How many directors' meetings were there during 1900?

Mr. FLANDERS: That is objected to as incompetent, irrelevant and immaterial; and I instruct you that you need not answer.

Q. You refuse to answer?

A. Under advice of counsel I do.

Mr. Flanders takes book.

Q. Will you give the dates of those meetings?

Mr. FLANDERS: That you need not answer either.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. Was the subject of the forms of contracts with publishers for the sale of the print paper considered at any of those meetings of the board of directors?

Objected to as irrelevant, immaterial and incompetent.

A. I don't think so.

Q. Have you examined the book to see whether it does or not?

A. Not with reference to that particular thing, but I don't think it mentions that at all.

Mr. KELLOGG: I offer in evidence the meetings of the board of directors during the year 1900 and ask the examiner to take the book.

Mr. FLANDERS: I would respectfully suggest to the counsel that he cannot offer in evidence something that is not in his possession and that he has never seen, and that before the examiner gives any direction to me or makes any request of me it would be a very good plan for him to see if he has any authority for making either a direction or a request.

463 Mr. KELLOGG: Well, you refuse?

Mr. FLANDERS: Who?

Mr. KELLOGG: The witness. Do you refuse to let us—

Mr. FLANDERS: Now, you need not answer that, Mr. Alexander. You haven't got that book in your possession, and you can so state.

Mr. KELLOGG: You refuse—

Mr. FLANDERS: I object to the repeated course of the counsel in asking the witness whether he declines to show a book which the counsel can see with his own eyes—both of them—is not in the possession of the witness but is in the possession of the counsel of the General Paper Company.

Q. Do you refuse to—

Mr. FLANDERS: You needn't answer that question.

Q. Do you refuse to answer that question?

A. Under the advice of counsel I do.

Q. Do any of those meetings of the board of directors in 1900 refer to the business between any of the corporations having a contract with the General Paper Company and the General Paper Company.

Mr. FLANDERS: That is objected to for the same reason, irrelevant, incompetent and immaterial.

Q. Will you answer?

Mr. Flanders and Mr. Brace confer.

Mr. FLANDERS: We will stand on the objection.

Q. Do you refuse to answer?

A. Under the advice of counsel I do.

Mr. FLANDERS: Well, wait a minute. Read him the question.

464 The question was read.

Mr. FLANDERS: You understand the question, don't you?

Mr. KELLOGG: Use all the time you want.

Mr. FLANDERS: We object to the statement of counsel. We are very grateful for permission to take all the time we want, but we will probably do that without his permission. And it might be a very good plan for us to understand that when the United States comes into court it comes like any other plaintiff, and however great and powerful it is and however distinguished its counsel, it has no greater rights than any other plaintiff, and we shan't be particularly deferential by reason of the fact that The United States is plaintiff.

Mr. KELLOGG: Now if you are making that speech for the public—

Mr. FLANDERS: I am not making it.

Mr. KELLOGG: I am simply asking of him plain questions, and I want answers, that is all. I am not going to ask any questions that any other person would not ask in any other lawsuit.

Mr. FLANDERS: Your remarks are improper in that you intimate that time is being consumed to your detriment, and I object to any remarks of that nature.

Q. Well, state whether you will answer the question or not.

Mr. FLANDERS: Now if you can answer that question you may answer.

A. My best recollection is, it does not.

Q. What do they refer to?

465 Mr. FLANDERS: That you need not answer.

Q. You refuse to answer?

A. Under advice of counsel I do.

Q. Do they refer in any way to the sales and disposition of the products covered by these contracts with the separate mills?

Mr. FLANDERS: That is objected to for the same reasons.

A. To the best of my recollection they do not.

Q. What is print paper?

A. It is a class of paper that is usually used by newspaper publishers and—

Q. What other kinds of paper are covered by these contracts, if you recall? Have you got one of the contracts there?

A. Fibre paper, manila paper, hanging paper.

Q. Butcher's fibre; is there any such paper as that?

A. Yes sir; that is a fibre paper.

Q. That is one of the fibre papers?

A. Yes sir.

Q. That is covered by these contracts?

A. Yes sir, fibre papers.

Q. During the existence of the General Paper Company, has there been a pool among these mills in connection with the General Paper Company, covering fibre paper or butcher's fibre paper?

Mr. FLANDERS: That is objected to as incompetent, immaterial, irrelevant, and not within the issue, calling for a conclusion of the witness; and I instruct the witness he need not answer the question.

Q. Do you refuse to answer the question?

A. Under advice of counsel I do.

466 Q. Is it not a fact that certain of the mills which made butcher's fibre were compensated by the other mills, and that the other mills made payments through E. A. Edmonds, who distributed the money to the mills making the butcher's fibre?

Mr. FLANDERS: Same objection, and that it is grossly leading, and the same advice.

Q. Do you refuse to answer?

A. Under the advice of counsel, I do.

Q. Isn't there less profit in the manufacture of butcher's fibre than in any other paper?

Mr. FLANDERS: That is objected to for the same reason, and the same advice given.

Q. Mr. Alexander?

A. Under the advice of counsel I refuse to answer.

Q. You refuse to answer?

A. Under the advice of counsel I do.

Q. The General Paper Company has sold under these contracts during the time of its existence, butcher's fibre made by some of these mills, has it not?

A. Sold all the fibre they have made.

Q. Well, including butcher's fibre?

A. Including butcher's fibre, yes, sir.

Q. What mills have made butchers' fibre during that time?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

467 A. What testimony I would give would only be from memory; not being in the selling department, I don't know.

Q. Give your best recollection.

A. The Dells Paper & Pulp Company, the C. W. Howard Company, the Wausau Paper Mills Company, and the Nekoosa Paper Company.

Q. Any other companies that you know of?

A. I couldn't say whether any of the other mills made butcher's fibre or not.

Q. The Nekoosa Paper Company is one you are connected with?

A. Yes sir, I am interested in the Nekoosa Paper Company.

Q. Now, was that company compensated for making butcher's fibre, by the other companies in this combination?

Mr. FLANDERS: That is objected to for the same reasons, and the same advice is given to the witness.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. State whether or not Mr. E. A. Edmonds, formerly of the Falls Manufacturing Company and now of the Rhinelander Paper Company, was the clearing house through which any payments were made to compensate any mill for making butcher's fibre.

Mr. FLANDERS: Same objection and same advice.

Q. You decline to answer, do you?

A. Under advice of counsel I do.

Q. State whether or not the other companies defendant, during any of the time in which the General Paper Company was its exclusive selling agent, paid through the General Paper Company to

the companies making butcher's fibre, any money to compensate these companies, or any of them, for making butcher's fibre paper because it was less profitable to make.

A. No sir, not to my knowledge.

Q. Did any of the defendants make such payments through E. A. Edmonds?

Mr. FLANDERS: That is objected to for the same reasons, grossly leading, and the witness is instructed that he need not answer.

A. Under advice of counsel I decline to answer.

Q. Do you know of your own knowledge that the General Paper Company, or some officer of the General Paper Company, did not send checks of the separate mills to Mr. E. A. Edmonds, who sent the checks or divided up the money between the mills making butcher's fibre?

Mr. FLANDERS: Same objection, and same advice.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. State whether or not any of the mills not making butcher's fibre sent checks through the General Paper Co., or any officer of the General Paper Company to E. A. Edmonds for such purpose.

Mr. FLANDERS: Same objection, and same advice.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. State whether the General Paper Company, or any officer of said company, sent the checks or the money of any of the constituent companies having contracts with it to Mr. Edmonds for the purpose of compensating the mills making butcher's fibre.

Mr. FLANDERS: Same objection, same advice.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. State whether settlements between the mills through the General Paper Company, or any officer of the General Paper Company, were made once in three months to compensate the mills making butcher's fibre paper.

Mr. FLANDERS: Same objection and same advice.

Q. You refuse to answer?

A. Under advice of counsel, I do.

Q. State whether there was any pool between the defendant companies, since the organization of the General Paper Company, on any other grades of paper.

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, grossly leading, and the counsel advises the witness

that he need not answer. Also objected to as calling for the opinion of the witness on a subject in relation to which he is not competent to testify.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. The butcher's fibre was covered by these contracts, was it not, which have been introduced in evidence, between the separate mills and the General Paper Company?

A. Yes sir, that is all covered.

Q. That was one of the products of the mills which the
470 General Paper Company was the exclusive selling agent of, as appears from the contract?

A. Yes sir.

Q. Do the books which are kept under your direction or by you show the payment of any of the defendant mills, since the organization of the General Paper Company, to any of the other defendant mills any sum of money to compensate any of the defendant mills making butcher's fibre?

Mr. FLANDERS: That is objected to for the same reasons, and the same advice is given the witness.

Q. Do you refuse to answer the question?

A. Under the advice of counsel I do.

Q. Have you the contracts with the various publishers for the sale of news print paper in your possession?

A. No sir, I haven't them in my possession.

Q. In whose possession are they now?

Mr. FLANDERS: They are in mine.

Q. Do you know, Mr. Alexander?

A. They are usually available for the selling department.

Q. What officer of the company has the custody of such contracts in your general business?

Mr. FLANDERS: You may consider them here for the purposes of this question.

Mr. KELLOGG: I want an answer to that question, because I am not going to subpoena you, Mr. Flanders.

Mr. FLANDERS: Well, I would be glad to get your dollar and a half, but still I am here to make some answers without that.

471 Q. What officer of your company has charge of the contracts between the General Paper Company and the publishing companies for the sale of news print paper?

A. Usually under the supervision of the sales manager.

Q. The general sales manager? Mr. Davis is now general sales manager, is he?

A. Yes sir.

Q. They are not in your control?

A. No sir, not absolutely.

Q. Did you bring them here to Milwaukee?

A. No sir.

Q. Have you had them in your possession since this subpoena was served on you?

A. No sir.

Q. Were they in your possession at the time the subpoenas to produce them was served on you?

A. No sir.

Q. Have they ever been in your possession as treasurer and secretary of this company?

A. No sir, nothing more than I have testified.

Q. Well, I don't understand whether you have testified as to whether you are the custodian of such documents.

A. Well, technically I might be considered the custodian, but usually they have been under the supervision of the general manager of sales.

Q. Could you get them any time you desired?

A. I would have to consult the counsel.

Q. You would have to consult your counsel? Was a subpoena served on you to produce them, Mr. Alexander?

A. Yes sir.

Mr. KELLOGG: I wish to file this subpoena, and the return thereof, as a part of the record.

472 Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

Subpoena and return marked Petitioner's Exhibit 103.

Mr. FLANDERS: You may assume for the purposes of this question that they are here present in court.

Mr. KELLOGG: Will you produce them?

Mr. FLANDERS: For your inspection?

Mr. KELLOGG: Yes.

Mr. FLANDERS: No.

Q. Was this subpoena, Exhibit 103, served on you?

Mr. FLANDERS: We admit that. You have proved it and filed it and recorded it, and now you are proving it over again.

A. Yes sir.

Q. Are these contracts between the General Paper Company and the publishers of newspapers in the cities designated in this subpoena, or any of them? (Handing witness Petitioner's Exhibit 103.)

A. I think so, yes sir.

Q. Do those contracts show the terms of sale, the period of sale, and are they all signed by some officer or agent of the General Paper Company?

A. I think they do.

Q. Have you seen them, any of them?

A. Yes sir.

Q. Did you go over all of them?

A. No, sir.

Q. Are the contracts usually on a printed blank?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, and the witness need not answer the question.

473 Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. State whether the said contracts are substantially all in the same form.

Mr. FLANDERS: That is objected to for the same reasons.

Q. I mean substantially all in the same general form?

A. Yes sir, I think they are.

Q. Do you know where that form of contract was procured, whether it was taken from the form of contract used by the International Paper Company or not?

Mr. FLANDERS: That is objected to as incompetent, irrelevant, immaterial and leading, and I advise the witness that he need not answer.

Q. State whether those contracts are signed by the separate mill corporations manufacturing the paper.

Mr. FLANDERS: That is objected to for the same reasons.

A. I think not.

Q. They are simply signed by the General Paper Company, by some officer or agent, and the purchaser of the paper, are they not?

A. Yes, sir, I think so.

Q. Is this also the case with other contracts for the sale of paper by the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and, to the counsel for the General Paper Company, unintelligible; I don't know what you refer to.

Q. Are the contracts which are made for the sale of the products of these mills—contracts, I mean, made by the General Paper
474 Company—are they signed by the separate mills, or by the General Paper Company?

Mr. FLANDERS: That is objected to as asked and answered, and for all the reasons above stated.

A. I think not.

Q. They are not signed by the separate mills?

A. No sir, not usually.

Q. This covers all of the grades of paper which the General Paper Company has the exclusive agency for, doesn't it?

A. Yes sir; I think it does.

Q. Can you, in a general way, state what the principal product of the defendant mills is, whether it is news print paper or other classes?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, and immaterial; and the witness is advised that he need not answer.

Q. Do you decline to answer?

A. Under advice of counsel I do.

Q. Do you know the total of sales each year by the General Paper Company, in value?

Mr. FLANDERS: Same objection, and same advice.

A. Under advice of counsel I decline to answer.

Q. Well, I ask you simply whether you know or not. Do you wish, Mr. Flanders, to advise him not to answer that?

Mr. FLANDERS: Certainly; it is wholly immaterial. It is just as immaterial as to know how much your income was last year, or mine.

475 Q. Do your treasurer's reports show the total sales in value each year, made by the General Paper Company?

Mr. FLANDERS: That is objected to for the same reasons and the same advice is given to the witness.

Q. Have you any books under your control showing the total sales each year of the General Paper Company?

Mr. FLANDERS: That is objected to for the same reasons, and I give the same advice to the witness.

Q. Do such sales each year amount to in the neighborhood of ten millions of dollars in value?

Mr. FLANDERS: Same objection, and same advice.

Q. Do you refuse to answer the question, Mr. Alexander?

A. Under the advice of counsel I do.

Q. State what dividends, if any, have been paid by the General Paper Company.

Mr. FLANDERS: Objected to for the same reasons, and I give the witness the same advice.

Q. Do you decline to answer?

A. Under the advice of counsel I do.

Q. You know, do you?

Mr. FLANDERS: I give the witness the same advice and make the same objection.

Q. You are treasurer of the company still, are you not?

A. Yes sir.

Q. If any dividends are paid it is your duty to pay them?

Mr. FLANDERS: That is objected to for the same reasons,
476 and I give the witness the same advice.

Q. You decline to answer?

A. Under the advice of counsel I do.

Q. Do your books show the dividends paid?

Mr. FLANDERS: That is objected to for the same reasons, and I give the witness the same advice.

Mr. KELLOGG: I want to have the witness state whether he refuses to answer.

WITNESS: Under the advice of counsel I decline to answer.

Q. Referring to Petitioner's Exhibit 29, do the minutes of the board of directors or the stockholders of each year show the report of the general sales agent?

A. I don't think so, no sir.

Q. Do they show that the sales agent made a report?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and the witness is advised that he need not answer that question.

Q. You decline to answer?

A. Under advice of counsel I do.

Q. Does the annual meeting of the stockholders for each year show that fact?

Mr. FLANDERS: Same objection, and same advice.

Q. Do you refuse to answer?

A. Under advice of counsel I do.

Q. Does the director's annual meeting for 1900, held in
477 December, 1900, show the presentation of a report of the sales manager?

Mr. FLANDERS: Same objection and same advice.

Mr. KELLOGG: I don't want to repeat that question, if the witness will make the entry that under the advice of counsel he refuses to answer, I won't ask him each time.

Mr. FLANDERS: If he does not answer, I assume he takes my advice. I don't care how many times you ask him, only it seems to me wholly immaterial. Counsel is here and gives certain advice, and takes the responsibility of it, and you may ask him every time if he declines to answer, if you think it is essential to the Government's case.

Q. Does the board of directors' meeting held in December 1901, the annual meeting, show the presentation of a sales agent's report?

Mr. FLANDERS: Same objection and same advice.

Q. Do you decline to answer?

A. Under the advice of counsel I do.

Q. Do the records of the board of directors' meeting of 1902, in December, at the annual meeting, show such a record?

Mr. FLANDERS: Same objection and same advice.

Q. You refuse to answer?

A. Under advice of counsel I do.

Q. Same question as to 1903, the annual meeting.

Mr. FLANDERS: Same objection and the same advice.

Q. You refuse to answer?

A. Under advice of counsel I do.

478 Q. Does the board of directors' meeting show any record of a report of the sales agent in 1904?

Mr. FLANDERS: Same objection and same advice.

A. Under advice of counsel I refuse to answer.

Q. Do any of those board of directors' meetings show any action taken by the directors as to the price of paper?

Mr. FLANDERS: Same objection and same advice.

Q. Do you decline to answer?

A. Under the advice of counsel I do.

Mr. FLANDERS: Well, just wait a minute. Read that question again.

The question was read.

Mr. FLANDERS: Now, just make the same objection, and the advice not to answer withdrawn.

A. No sir, I think not.

Q. Does it show any record of the board of directors on the subject of the price of paper being obtained from time to time by the General Paper Company?

Same objection.

A. No sir, I think not.

Q. Was there a meeting held in January, 1902?

Mr. FLANDERS: That is objected to for the same reasons and the same advice given.

Q. You refuse to state whether there was any meeting held of the board of directors in January, 1902?

A. Under advice of counsel I do.

479 Q. At any meeting held in January, 1902, or about that time was the subject of making any arrangement with the Manufacturer's Paper Company discussed, and is there any record of any such discussion?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and the same advice given.

(Mr. Kellogg and Mr. Olds confer.)

Q. Do you know whether at any time the subject was discussed at the board of directors' meeting as to making any arrangement with the Manufacturer's Paper Company about the sale of paper in the territory west of Chicago?

Mr. FLANDERS: Same objection and same advice.

Q. Do you refuse to answer?

A. Under the advice of counsel I decline to answer.

Q. Does the record book of the meetings of the board of directors and stockholders also contain the records of meetings of the executive committee?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. No sir, I don't think it does.

Q. It does not?

A. No sir.

Q. Is there any record kept of the meetings of the executive committee?

Mr. FLANDERS: Same objection.

A. Yes sir, there is some memoranda records kept.

Q. Do you have those in your possession?

Same objection.

A. No sir, I haven't.

Q. Who keeps those memoranda?

Same objection.

480 A. They are usually kept at Chicago where the executive committee meetings are held.

Q. Who is the secretary of the executive committee?

Mr. FLANDERS: Same objection.

A. I have acted as secretary of the executive committee usually, when I am there.

Q. Do you keep a regular record book?

Same objection.

A. No sir.

Q. Are those minutes preserved?

Same objection.

A. Most of them, yes sir.

Q. Have you got them in the Chicago office?

Same objection.

A. Not at the present time.

Q. Where are they?

A. They are in Mr. Flanders' possession.

Q. Will you produce them here in court?

Mr. FLANDERS: Well, Mr. Alexander, if you are able to produce any of the things in my office, it might be a good plan for you to

say you would, and if you are not, it might be a good plan for you to say that you are not able to.

A. I am not able to.

Q. Well, as the secretary of the General Paper Company are you the custodian of such records?

Mr. FLANDERS: That is objected to as a question of law and wholly irrelevant, incompetent and immaterial. And the witness is instructed that he need not answer any questions of law, including this one.

481 Q. You refuse to answer?

A. Under advice of counsel I do.

Q. When did Mr. Flanders get possession of them?

Mr. FLANDERS: That you need not answer either. Wholly irrelevant and immaterial.

Q. When did they leave your possession?

Mr. FLANDERS: You need not answer that question, either.

Q. Do you decline to answer those questions?

A. Under advice of counsel I do.

Q. Have you had them in your possession within the last thirty days?

Mr. FLANDERS: You need not answer that question either. All his questions are objected to as irrelevant, incompetent and immaterial, and the same advice given.

Q. Do those records show any proceedings taken by the executive committee from time to time, or at any time, during the existence of the General Paper Company in relation to the price received or to be received for the sale of print paper or other paper covered by these contracts?

Mr. FLANDERS: Just wait a minute. (After conference with Mr. Stuart.) If you know.

Q. Do you know?

A. I don't think I do. That is the best of my recollection.

Q. Have you examined with reference to that fact.

Mr. FLANDERS: That is objected to for all the reasons above stated.

482 A. Not particularly, but that is my best recollection.

Mr. Flanders and Mr. Kellogg confer privately.

A recess was here taken until two o'clock p. m., at which time the hearing was resumed.

The witness L. M. ALEXANDER was recalled and direct examination was resumed.

Mr. Flanders dictated into the record the following :

For the purposes of this action only, the several corporations represented in this action by Winkler, Flanders, Smith, Bottum & Fawcett, Defrees, Brace & Ritter and John Barnes, admit that all subscriptions of stock to the General Paper Company and made by the individual subscribers therefor from time to time, were made for and on behalf of some paper manufacturing corporation with which each of such individuals was connected, and that the stock issued to such individuals was, with the exceptions hereinafter stated, paid for at or about the time when such subscriptions were made and the stock taken by the several persons for said mill corporations respectively, with the moneys of said defendant corporations with which such individuals were respectively connected, and that such corporations thereby became and have continuously remained the beneficial owners respectively of the stock so issued to such individuals, and dividends declared upon the stock were the property of such corporations respectively ; that said stock was from time to time allotted to such corporations as should make contracts with the

483 General Paper Company in the form of those contracts actually executed which have been received in evidence in this case creating it their exclusive selling agent of the kinds and grades of paper mentioned in such contracts, and upon the basis of the estimated relative productions of such kinds and grades of paper made by the mill corporations represented, and that all subscriptions by, and allotments of, stock to such mill corporations were made approximately on said basis ; that the exceptions above referred to are as follows : The stock of E. A. Edmonds of the Rhineland Paper Company, the stock held by John S. Van Nortwick and William N. Van Nortwick, the stock of the Combined Locks Paper Company, the stock of George W. Mead of the Consolidated Water Power and Paper Company, and the stock of W. Z. Stuart. The said defendants will produce, as a part of this admission, and consent that the same be filed or incorporated in the record, a correct list of the individuals to whom stock was issued with the names of the corporations respectively represented by said individuals, the dates of the issuance of the stock to said individuals for their respective corporations, together with copies of all outstanding certificates of stock and all endorsements thereon and assignments thereof, and a statement showing how and by whom the said certificates are now held."

Mr. KELLOGG : I offer Exhibit 102 in evidence.

Petitioner's Exhibit 102 is as follows :

- 484 Original Payments Account Capital Stock Made to General Paper Company and Dates of Payment Made Thereon, Being Thirty per Cent. of Seventy-five per Cent of \$100,000, Covering 1,000 Shares.

Received July 5th, 1900 :

Shareholders.	No. shares.	Amount.	30 % of 75 % is
J. A. Kimberly.....	260	26,000.00	5856.00
F. C. Shattuck.....			
J. C. Kimberly.....			
J. S. Van Nortwick.....	90	9,000.00	2025.00
T. E. Nash.....	145	14,500.00	3262.50
F. Garrison.....	46	4,600.00	1035.00
L. M. Alexander.....	72	7,200.00	1620.00
John Daly & E. T. Harmon.....	54	5,400.00	1215.00
G. A. Whiting & C. A. Babcock.....	72	7,200.00	1620.00
C. W. Howard.....	34	3,400.00	765.00
D. R. Davis.....	81	8,100.00	1822.50
N. H. Brokaw, E. A. & W. L. Edmonds.....	99	9,900.00	2227.50

Received July 16th, 1900 :

A. M. Pride.....	18	1,800.00	405.00
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Received August 16th, 1901 :

B. F. Nelson.....	29	2,900.00	652.50
	1000	\$100,000.00	\$22500.00

Q. I believe the second payments were called and made some time about December, 1901.

A. Yes sir.

Q. That was the total payment ?

A. Yes sir.

Q. Can you state which companies made the second payments ? If you want to produce a list of them, why do so, or if you can state it now, do so.

Mr. FLANDERS : If you can state it generally, state it.

Q. Perhaps that will help you (handing witness paper).

Mr. FLANDERS : State the general facts as to how the remaining seventy-seven and one-half per cent of stock subscriptions were paid, and when.

485 WITNESS : It was paid some time in December, 1901, between the 20th and 23rd, and by the same corporations or individuals as paid on the original list.

Mr. KELLOGG : That is all I wish to ask of Mr. Alexander at present. I don't want to waive the right to have him answer the questions and to produce the papers and documents that we have asked for, and with that understanding I am willing to excuse Mr. Alexander at present and put on some other witness.

Mr. FLANDERS: We will reserve the right to cross-examine him until later. I hadn't supposed you were going to suspend so soon, and I am not quite prepared to go on.

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James G. Flanders, Volume 6.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs. }
 GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of George A. Whiting.

May 23rd, 5th Day.

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Direct examination..... 271
 Cross examination.....
 Re-direct examination.....
 Re-cross examination.....

ROBERT S. TAYLOR,
 Special Examiner.

487 GEORGE A. WHITING, a witness on behalf of the petitioner, being duly sworn by the examiner, testified as follows:

Examined by Mr. KELLOGG:

- Q. What is your full name?
 A. George Albert Whiting.
 Q. George A.?
 A. George A., yes sir.
 Q. Where do you reside, Mr. Whiting?
 A. I reside at Neenah, Wisconsin.
 Q. Are you connected with any of these paper companies defendant?
 A. Yes sir.
 Q. In what capacity?
 A. I am president of the—do you mean the paper companies or the General Paper Company?
 Q. The paper companies.
 A. I am president of the Wisconsin River Paper and Pulp Company.
 Q. You are also vice president of the General Paper Company?
 A. Yes sir.

Q. How long have you been connected with the Wisconsin River Paper and Pulp Company?

A. Since its organization.

Q. How long is that?

A. I can't call the date of its organization.

Q. Well, about?

A. About fourteen years, I think.

Q. About fourteen years?

A. Somewhere along there.

Q. What grades of paper does it make?

A. It makes print paper.

Q. Exclusively?

A. Some hanging paper.

Q. What grades of paper does it make of which the General Paper Company is made the exclusive selling agent?

488 A. All print and hanging; they sell all of our paper.

Q. They sell all of your paper.

A. Yes sir.

Q. And the two grades of paper are print and hanging paper.

A. Yes sir.

Q. Are you well acquainted with most of the other mill men defendants in this case? I mean the officers of the mills defendant in this case.

A. Why, I have more or less of an acquaintance with them, yes sir.

Q. How long have you been in this business?

A. In the paper business?

Q. Yes.

A. I think I have been in the paper business continuously about thirty years; in that neighborhood. Of course I can't remember dates exactly.

Q. About what is the output of your mill per annum?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. The output of our mill per annum now?

Q. Yes.

A. For any given length of time?

Q. The last four or five years, since the organization of the General Paper Company.

Same objection.

A. The first six months from July to January average between ten and eleven million pounds, and it has gone along from twenty—it has increased each year until it has gone along to about between twenty-six and twenty-seven million pounds last year; twenty-six millions, six hundred and some odd thousand, I believe. It has increased all the time.

489 Q. How much of that is print paper?

Mr. FLANDERS: Same objection.

A. I couldn't answer that, sir, without consulting the books.

Q. Can you give us a general idea, Mr. Whiting?

Same objection.

A. The idea would be general, very general.

Q. Well, that is about what I want.

A. Well, I want time to think of it before I give you even a general idea. I should think that there was from seventy-five to ninety per cent. of it print paper.

Q. You mean by print paper the white rolled print that is used by publishers in the publication of newspapers mostly, isn't it?

A. Both white and tint.

Q. Now you are acquainted with the directors of the General Paper Company, are you not?

A. Most of them; I think I am acquainted with all of them.

Q. You have known the principal officers of all these defendant mills during the time the General Paper Company has been doing business, have you not?

A. I have no personal knowledge of the offices that some of the people that are directors of the General Paper Company hold in the respective companies.

Q. But you have a personal knowledge of most of them?

A. Well, nothing any more than such as has come in correspondence; I have seen them sign their signatures.

Q. Well, you know, as I understand you, all of the directors of the General Paper Company?

A. I have an acquaintance with all of them.

490 Q. And you have known all of the directors since its organization?

A. Well, that would be putting it a little broad there. There are a few of the directors that I hardly think I would know on the street today; that is, two or three of them.

Q. There are twenty-five directors, are there not?

A. Yes sir.

Q. Now Mr. Whiting, when did you first have negotiations with any of the mill men about the organization of a selling company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial. (Consulting with General Winkler.)

A. Why, there had been talk of a selling company for several years prior to its organization. With these particular men I don't know as I could answer any dates how long it was prior to this organization that we had been looking into the matter relative to organizing a company.

Q. Give us a general idea about how long before this organization began to take definite shape.

Mr. FLANDERS: Same objection.

A. I think—if I want to make an answer I want it reasonably correct, I don't want simply to guess at it and the amount of business I do I can't carry it in my memory. Perhaps it was,—perhaps it might have been six months to a year prior to its organization.

Q. Prior to the organization of the General Paper Company the competition between these various mills was very keen, wasn't it?

491 Objected to as irrelevant, incompetent, immaterial, leading and calling for the opinion of the witness.

Q. State whether competition was strong among the mills for the sale or in the sale of the grades of paper contained in these contracts.

Same objection.

A. Conditions make competition; the conditions are different each year.

Q. Well, prior to the organization of the General Paper Company was the competition strong?

Same objection.

A. Competition was strong, yes. It is strong now.

Q. Well, we will see about that. You were each selling your own product, were you?

A. Through our respective selling agents.

Q. Now some time in the winter of 1900, you got together with these other gentlemen and talked over the project of organizing a general selling company, did you not?

Mr. FLANDERS: I object to that for all the reasons stated, as leading, suggestive and assuming facts that have not been testified to by the witness or anybody else, and I shall insist that the counsel in examining the witnesses shall not put leading questions to them.

Mr. KELLOGG: I will withdraw the question.

Q. Did you have any conversation, during the winter of 1900 and the spring of 1900, with any of the officers of these defendant mills about organizing a selling company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

492 A. Why, we certainly talked this matter over before we organized.

Q. With whom did you talk this matter?

A. I don't remember.

Q. Do you remember Mr. Kimberly?

Same objection.

A. I probably talked it over with Mr. Kimberly.

Q. Please state some of the other gentlemen that you remember talking it over with.

Same objection.

A. I probably talked it over with my associate, Mr. Babcock.

Q. What mill is he connected with?

A. He is connected with the Wisconsin River Paper and Pulp Company.

Mr. FLANDERS: He is also connected with another of your companies, isn't he?

WITNESS: He is also secretary of the Plover Paper Company.

Q. Well, who else?

A. I didn't talk it over with the Plover Paper Company, however; they are not connected with this case.

Q. Who else did you talk it over with?

Same objection.

A. We talked it over in a general way among ourselves.

Q. That is, all you mill men that are in this combination, do you mean?

Mr. FLANDERS: Same objected to for all the reasons.

A. I don't know as I understand this "combination."

Q. Well, the mill men whose corporations afterwards made contracts with the General Paper Company to sell their products.

493 Same objection.

A. It is reasonable to presume we talked it over.

Q. Well, I want to know whether you did or not.

A. I presume we did.

Q. You had some meetings, did you not?

Mr. FLANDERS: Same objection.

A. Yes.

Q. Did you have any in Chicago?

Same objection.

A. I don't remember that we did about this particular defendant.

Q. Did you have any meetings in Chicago where you discussed the organization of a selling company?

Same objection.

A. I can't remember.

Q. Did you have any meeting at Chicago where you discussed the subject of making the Manufacturer's Paper Company the selling agent of these defendants or any of them?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and the witness is instructed that he need not answer.

Q. Do you decline to answer the question?

A. Under the advice of the attorney, yes sir.

Q. Well, at any meeting in Chicago during the winter of 1900 or

the spring of 1900 did you discuss organizing a selling agent company?

A. During the winter of 1900?

A. Yes, or the spring of 1900.

Mr. FLANDERS: Same objection.

494 A. Well sir, I don't remember. I don't remember.

Q. Do you remember a meeting held in Chicago?

A. I do not remember the details of these meetings at all. I never—

Q. I am not asking you—

Mr. FLANDERS: Let him finish his answer.

Q. Yes, excuse me.

A. I attended the meetings and dismissed them from my mind; I had other business to attend to, whatever meetings there were; the records will show whether I was there or not.

Q. Well, do you remember of a meeting which took place in Chicago in March 1900?

Same objection.

A. I don't recall it now, Mr. Kellogg.

Q. Do you recall any meeting at the Grand Pacific hotel in March 1900.

Same objection.

A. The Grand Pacific?

Q. Yes.

A. No.

Q. Do you know Mr. J. C. Brocklebank?

A. Yes.

Q. Who is he?

A. He holds some office in the Manufacturer's Company, or he is connected with them.

Q. Have you ever had any business with him?

Objected to as irrelevant and immaterial; and the witness is instructed he need not answer the question.

Q. Do you decline to answer?

A. Under the advice of my attorney, yes.

495 Q. Do you remember a meeting there at which Mr. J. A. Kinberly, Mr. W. Z. Stuart, Mr. T. E. Nash, Mr. Frank Garrison, Mr. John Van Nortwick, Mr. A. M. Pride, Mr. George A. Whiting, Mr. Charles Babcock, and Mr. L. M. Alexander were present? I am simply asking if you remember such a meeting.

A. I do not remember that meeting, Mr. Kellogg.

Q. You do not?

A. No, sir.

Q. When did you meet to finally organize this company?

A. I don't remember the exact time.

Q. It was about the 26th of May, 1900?

A. It was, I think, some time in the spring of 1900.

Q. Prior to that meeting do you remember or do you not remember of meeting with these gentlemen?

Same objection.

Q. Why, I remember of meeting with those gentlemen or some of them. I don't know as I remember of meeting with all of them. I know that there were conferences, and the matter of organizing a company was discussed.

Q. I want to get at who you recollect attended some of those conferences, Mr. Whiting.

Same objection.

A. It is a pretty hard thing for a man to remember back five years as to who was at a meeting. I can tell in a general way who I think was there, although they might not have been there.

Q. That is all I want.

A. I think that Mr. Nash was there. I think Mr. Kimberly was there. I am not so positive about Mr. Garrison, yet I think
496 he was there; and a number of others.

Q. Do you remember Mr. C. W. Howard?

A. Mr. C. W. Howard was at a part of the meetings, as I remember it, a part of the conferences.

Q. Mr. W. L. Edmonds?

A. I am not so positive about him, but I think he was.

Q. Mr. E. A. Edmonds?

A. I don't remember.

Q. Mr. A. M. Pride?

A. I can't remember as to whether he was at those conferences or not.

Q. Mr. D. R. Davis of the Dells Paper Company?

A. I think he was.

Q. Mr. J. S. Van Nortwick?

A. I don't remember of his being there.

Q. Mr. B. F. Nelson of the Hennepin Paper Company?

A. I think he was not at the conferences originally.

Q. You think he was not?

A. I think he was not.

Q. Well now, at those conferences, what did you generally discuss, Mr. Whiting, about this selling company?

MR. FLANDERS: That is objected to as irrelevant, immaterial and incompetent.

A. We discussed organizing a selling agency, a company for the purpose of selling paper, products of the mills.

Q. What was the company to be? What was the general discussion?

Mr. FLANDERS: Now just wait a minute. You are not obliged to say what the company was to be. If you tell anything, tell what was said and done.

Q. All right, tell what was said and done.

497 A. There was a company organized for the purpose of selling paper; that is what was done.

Q. Was this finally agreed on between you gentlemen before the final organization of the company?

Mr. FLANDERS: That is objected to for the same reasons and as leading and suggestive. This witness has shown no reluctance to answer the questions, and I insist that counsel must confine himself to proper questions on direct examination, and I remind you again, Mr. Whiting, that it is not for you to draw your conclusions or your understanding or anything of the kind. If you tell anything you are to tell what was said and done.

Question read.

Mr. FLANDERS: You need not answer that question.

Q. Do you decline to answer it?

A. Under the advice of my attorney I do.

Q. Mr. Whiting, at any of those meetings was or was not the plan which was finally adopted generally discussed between you?

Mr. FLANDERS: I object to that as leading and suggestive irrelevant and immaterial. If you have anything to say about that meeting—

Mr. KELLOGG: Well, now—

Mr. FLANDERS: Just wait a minute. I insist that if the witness has anything to say about that meeting he should confine himself to what was said and done. Now I instruct you, Mr. Whiting, that if you answer that question you are to answer it by telling what was said and done.

A. Oh, I don't remember what was said, and what was done
498 is a matter of record.

Q. Well, was there anything said about what was finally done?

A. It is reasonable to suppose there was.

Q. Yes. Were the contracts which were finally made submitted to that meeting?

Mr. FLANDERS: That is objected to for the reason that the question is indefinite, it fixes no time nor place, and the witness is entitled to have the time and place fixed.

Mr. KELLOGG: If he cannot fix it himself I don't know how I can fix it.

Mr. FLANDERS: Perhaps it is a failure of justice, then.

Mr. KELLOGG: Well, we will see.

Mr. FLANDERS: Yes, we will see before we get through.

The last question was read.

Mr. FLANDERS: I instruct you that you are entitled to have the counsel fix the time and place for his question.

A. I don't understand what meeting you mean.

Q. What meetings did you have prior to May 26th, 1900, and we will see.

A. I don't remember the dates of the meetings.

Q. Give us the dates as nearly as you can recollect.

A. I can't recollect the dates of those meetings.

Q. How many times did you meet after January 1, 1900?

A. I don't know.

Q. Did you meet several times?

A. Anything above one is several, yes.

Q. You met several times?

A. Yes.

Q. Did you meet in the month of April?

499 A. I can't remember the dates.

Q. Or in the month of March?

A. I can't remember the dates of those meetings.

Q. Or in the month of May? Prior to May 26, 1900? But you remember you did meet.

A. I remember in a general way we met.

Q. Where did you meet?

A. I think we met here once.

Q. Whereabouts here?

A. I am not positive, but I think we had a meeting at the Hotel Pfister or Mr. Flanders' office.

Q. At the Hotel Pfister, were those gentlemen which you have named present or most of them?

Mr. FLANDERS: I object to that as leading and suggestive.

Q. Well, who were present at the meeting at the Hotel Pfister? If we must have it in detail we will have it.

Mr. FLANDERS: I suppose you won't threaten me, because I am a timid man.

Mr. KELLOGG: Yes, you are, very. You are delicate.

A. I don't just remember.

Q. Name some of the men that you remember were present at the Hotel Pfister meeting.

A. Now I say I am not positive that it was the Hotel Pfister. I do a good deal of business in the course of a year, and I do not rely entirely upon my memory.

Q. Generally, who were present? (giving us as near as you can) at the Hotel Pfister?

Mr. FLANDERS: I object to that question as irrelevant, incompetent, immaterial and to the counsel for the General Paper Com-

pany unintelligible. I don't know what you mean by saying "generally."

500 A. I will have to have that read to me.

Q. Please state the men that you recollect were present at that meeting at the Hotel Pfister.

A. Well, now, I can't recall who was present.

Q. Was Mr. J. A. Kimberly there?

A. I don't recollect whether he was or not.

Q. Is he one of the leading paper manufacturers in the State of Wisconsin?

A. He is one of the leading paper manufacturers in the State of Wisconsin.

Q. Was he one of the leading men in organizing this company?

A. He was one of the men; I don't know as he was leading. I don't know as there was any particular leading man in it.

Q. Was H. Babcock there?

A. I couldn't swear whether he was or not.

Q. Was J. S. Van Nortwick there?

A. I couldn't swear whether he was or not.

Q. Was Mr. C. W. Howard there?

A. I couldn't swear whether he was or not.

Q. Mr. L. M. Alexander.

A. I think Mr. Alexander was in the meeting, whether it was in the office or at the Pfister hotel.

Q. Was Mr. T. E. Nash there?

A. I think Mr. Nash was there.

Q. Mr. F. Garrison?

A. I think Mr. Garrison was there.

Q. Mr. E. T. Harmon?

— I am not so positive as to Mr. Harmon.

Q. Mr. C. A. Babcock?

— I think Mr. Babcock was there, yes sir.

Q. Mr. W. L. Edmonds?

A. I am not positive.

Q. Mr. A. M. Pride?

A. I am not positive.

Q. Mr. D. R. Davis?

A. I think he was there.

501 Q. And Mr. E. A. Edmonds.

A. I don't know whether he was there or not; I don't remember.

Q. Was Mr. B. F. Nelson there?

A. I hardly think he was; I don't remember.

Q. Mr. A. C. Bossard.

A. Who is Bossard?

Q. He is with the Itasca Paper Company.

A. I don't remember of seeing him there.

Q. Mr. Aiken or Mr. Cheeseman of the Petoskey Fibre Paper Company.

A. I don't remember seeing him there.

Q. Mr. W. B. Murphy of the Rhinelander Paper Company?

A. Murphy of what company?

Q. The Rhinelander Company.

A. No sir.

Q. Now did you have any other meetings than that?

A. Prior to the organization?

Q. Yes.

A. I think there was.

Q. Where?

Mr. FLANDERS: Wait a minute. (After consulting with Mr. Stuart.) All right, you can answer.

A. I think there was a meeting of some of these people, if not all of them, at Appleton once.

Q. That was before the organization of the company?

A. Yes sir.

Q. Do you remember who were present at that meeting?

A. I can't remember who was present any more than I can at the theater.

Q. Was Mr. W. Z. Stuart there?

A. I can't remember.

Q. Was he at the meeting at the Pfister house?

A. I don't remember whether Mr. Stuart was there or not.

Q. Well, state whether or not the same gentlemen generally were there at the Appleton meeting that were here at the Pfister house?

Mr. FLANDERS: I object to that as leading, suggestive, irrelevant and immaterial, and that the question should be confined to who was there.

Q. Well, state who was present at the Appleton meeting, then.

A. Mr. Kimberly was there; I think Mr. Sensenbrenner of his firm was there; I think Mr. Howard was there.

Q. C. W. Howard?

A. Yes. I was there. I think Mr. C. A. Babcock; I am not so positive about Mr. Nash and Garrison, whether they were or not. I think that one of the Prides was there, whether it is A. M. or C. B. or whatever his name is, I can't tell; and I think there was a gentleman there by the name of John McNaughton.

Q. Whom did he represent?

A. Why, I don't think he represented—he has stock in several mills, the same as all the rest of us have. I don't think he represented any particular mill.

Q. Was Mr. D. R. Davis there?

A. I don't know whether Dave Davis was there that day. I think one of the Davises was there.

Q. Of the Dells Paper and Pulp Company.

A. Now, mind you, this is the best of my memory.

Q. Now, Mr. Whiting, you recollect the day you organized this company, don't you, the 26th, 1900?

A. I don't recall the day we organized.

Q. Well, you remember of its organization?

A. Yes, I remember of its being organized.

Q. You remember of being present?

A. Yes.

503 Q. And as one of the electors?

A. I think I was elected a director there.

Q. At the first meeting?

A. Yes.

Q. Have you any doubt that meeting was held on the 26th of May, 1900, as the record shows?

A. I haven't seen the record.

Q. Well, you have heard it testified to here, haven't you?

A. By hearsay, it was the 26th of May. I don't know whether it was or not.

Q. Now, Mr. Whiting, at any one of these meetings, was the subject of entering into a contract with a selling company to be organized discussed?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I don't remember of its being discussed prior,—that is, the form of contract, prior to its organization.

Q. Was the subject of making a contract discussed?

Mr. FLANDERS: Same objection.

A. I think it was.

Q. Was the subject of awarding the stock of the central company discussed?

Same objection.

A. I think it was.

Q. How it should be held?

Mr. FLANDERS: I object to that question and insist that the witness should confine his answer to what was said and done on that subject.

Mr. KELLOGG: That is what I am asking him.

Q. Was it discussed?

A. Was what discussed?

504 Q. How the stock was to be divided.

Mr. FLANDERS: Same objection.

A. I don't remember whether it was discussed at that meeting or not.

Q. At any of the meetings that you have mentioned.

A. I presume it was; I don't remember.

Q. You don't remember it at all?

Mr. FLANDERS: Now just a moment. I object to the witness presuming anything, and I move to strike that portion of his answer out; and I wish to say on the record here that the testimony of the witness should be confined to his recollections, not to presumptions, guesses, or anything of that kind.

Q. Do you recollect whether the subject of how the stock of the General Paper Company was to be divided was discussed or not?

Mr. FLANDERS: Same objection.

A. I don't remember whether it was discussed or not.

Q. Have you any recollection of the subject ever being discussed between you and these gentlemen, or any of them, prior to the day you met to organize?

Mr. FLANDERS: Same objection.

A. Just repeat that question, will you please.

The question was read.

A. I don't know that I do remember prior to that day.

Q. Prior to that day, then, I understand you that you do not know that it was ever discussed between you, or do you mean that you do not recollect it?

505 Mr. FLANDERS: That is objected to as assuming that he has testified to something that the witness has not said.

Q. Well, what is your best recollection on the subject?

A. Of the division of the stock?

Q. Yes sir.

A. The stock was divided.

Q. How was it to be divided?

Mr. FLANDERS: I object, and insist that the witness shall confine his answers to what was said and done.

A. The records will show how it was divided. I don't remember how it was divided.

Q. Do you remember any discussion of the subject of dividing it?

Mr. FLANDERS: Same objection, irrelevant and immaterial.

A. There was a discussion; I don't remember just what the discussion was.

Q. What was the discussion, as near as you can recollect?

Mr. FLANDERS: Objected to as already answered, irrelevant and immaterial.

A. I don't remember what the discussion was.

Q. Did you have any idea prior to May 26, 1900, what proportion of the stock your company was going to get?

Mr. FLANDERS: That is objected to as irrelevant, incompetent,

immaterial, and the witness is instructed that he need not answer the question.

Q. Do you decline to answer?

A. Under the advice of my attorney I do.

Q. Did you have any discussion with any of these gentlemen prior to May 26, 1900, as to what proportion of stock your company would get?

Mr. FLANDERS: Objected to for all reasons hereinbefore stated and as already asked for and answered.

A. 26th of May, 1900? That is getting back a good ways for a man to remember. I can't remember that we had any discussion prior to that date.

Q. Did you on that date?

Mr. FLANDERS: Same objection.

A. I can't tell you what the discussion was on that date.

Q. Do you remember of the subject being discussed between you?

Same objection by Mr. Flanders.

A. In fact, I don't remember what amount of stock we subscribed on that date.

Q. Do you remember whether the subject was discussed that day at all or not?

Same objection by Mr. Flanders.

A. I don't remember whether the subject was discussed. It might have been, but I don't remember.

Q. Mr. Whiting, prior to the time you subscribed for the stock for your mill, did you have any understanding with the other gentlemen who went into this organization as to the amount of stock which should be given to each one of you?

Mr. FLANDERS: I object to that as irrelevant, incompetent, immaterial, and I insist that the witness shall confine himself to answering what was said and done. Otherwise I instruct him not to answer that question.

Q. Do you decline to answer it?

A. Under the advice of my attorney.

507 Mr. FLANDERS: If you can remember what was said and done on that subject, why, tell him.

WITNESS: Why, it is a physical impossibility for a man to remember back five or six years ago, that is doing business every day.

Q. Do you pretend to say that you cannot remember the substance of what was said between you and these gentlemen about the division of the stock of this company?

A. On that day?

Q. No, on any day.

A. The substance?

Q. Yes sir, the substance.

A. Of the division of the stock?

Q. Yes sir.

A. The stock was to be divided among the stockholders.

Q. Among the mills?

A. The stockholders.

Q. Well, among the mills?

A. Among the subscribers to the stock.

Q. Mr. Whiting, wasn't it understood between you that the stock was to be divided between the mills on some basis?

Mr. FLANDERS: Now just wait a minute. I instruct you that you are not at liberty to give what you understood about it but to give what was said and done.

Mr. KELLOGG: The substance of what was said and done.

A. Well, I don't remember just what was said and done.

Q. I don't ask you *just* what was said and done, but about a matter of that importance can't you remember the substance of your understanding with these men?

508 Mr. FLANDERS: That I object to; and I have already said to this witness that the question of his understanding is not proper, that he is to confine his answer to what was said and done.

A. (After some hesitation.) If there is a question it has slipped my mind. What was it?

The question was read.

Q. What is your answer?

A. By George, I want to get that question read again.

I don't propose to—

Mr. KELLOGG: Read it again.

Mr. FLANDERS: Read the whole business again.

The question and the objection were read.

A. The stock was divided as was supposed to be equitable among the subscribers. Some subscribed for more and some subscribed for less.

Q. Will you state the substance of what was said as to the basis of dividing the stock?

A. Why, really, I don't understand what you mean.

Q. Some basis was adopted on which to divide this stock among the several mills, was it not?

A. The books were opened and the parties there subscribed to the stock.

Q. Do you mean to say that there was no understanding of any basis upon which this was to be done at that meeting?

Mr. FLANDERS: Now just wait a minute. I object to that and I insist that the witness is not at liberty to give his understanding of

what occurred but he must confine his answer to what was said and done.

Mr. KELLOGG: You don't mean literally every word that
509 was said and done, do you, Mr. Flanders? Now be fair with the witness. He has a right to give the substance of it.

Mr. FLANDERS: I am trying to be fair. I am a good deal fairer than you are. I say now that your question is improper, and I have so much respect for your ability that I believe you know it is improper.

Mr. KELLOGG: No, sir, I do not.

Mr. FLANDERS: Well, it is improper, and I will inform you,—that this witness is not at liberty to give his understanding about what happened there. He is to tell what was said and done.

Q. I ask you to give the substance of the understanding arrived at by the conversations there, of the basis on which this stock was to be divided?

Mr. FLANDERS: I instruct you again that you are not at liberty to give the substance of your understanding of anything. You are to give what was said and done, and we will find out what the understanding was from that.

Q. Do you decline to answer?

Mr. FLANDERS: If you can tell what was said and done on that subject, go ahead and do it.

A. Why, I can't swear to just what was said or done there. What was done the record shows, and what was said has passed from my memory.

Q. Does the record show a basis adopted for the division of the stock—I mean the record of that meeting.

Mr. FLANDERS: That is objected to for the same reasons and on the further ground that the record is the best evidence and
510 that the witness is not obliged to construe the record.

Q. Well, do you decline to answer it?

Mr. FLANDERS: You can tell him what was said and done, that I have made no objection to, but I object to your giving your understanding of what somebody else thought.

Q. I am not asking you for your understanding of what somebody thought; I am asking you for the substance of what was said about a basis for the division of the stock. Now, do you understand that?

A. The substance of what was said about the basis of the division of the stock?

Q. Yes sir.

A. I don't know as there was any particular basis at that time.

Q. Was a basis adopted at that meeting?

Mr. FLANDERS: Wait a minute, I object to that and insist that you shall confine your answer to what was said and done.

Q. Please answer the question.

Mr. FLANDERS: If you can tell him what was said and done, tell him.

A. I couldn't answer the question.

Q. You can't answer it?

A. No sir.

Q. State whether you gentlemen who organized the General Paper Company, or caused it to be organized, had an agreement between you by which the basis on which the stock was to be divided between the several mills was stated.

Mr. FLANDERS: That I object to, and I insist that the witness confine his answer to what was said and done, and that it is not
511 for him to construe the acts or sayings of other people but to say what was said and done, and the construction is for the court or for somebody else.

A. Why, I don't know as there is any particular agreement; there might have been an understanding.

Q. What was that?

Mr. FLANDERS: I object to that as irrelevant, incompetent, immaterial, and I insist again, Mr. Witness, that you confine your statement to what was said and done.

Q. Now, what was *the* understanding that you referred to?

Mr. FLANDERS: I instruct you to confine your statement to what was said and done.

A. Well, as I say, I don't remember what was said, and the records will show what was done.

Q. What did you mean by "there might have been an understanding"?

Mr. FLANDERS: That I object to as irrelevant, incompetent and immaterial.

A. I will tell you what I mean, if you want to know.

Q. Yes sir.

A. There never was a stock company organized on the face of God's earth, or any other business proposition, but what there was an understanding as to how much stock should be taken—a business understanding.

Q. Certainly, you are right about it, and I want you to go on as a business man and state what that was.

A. I think I took \$3500 of the capital stock; I am not positive as to that; the records will show.

Q. Now, as a business man, you had some understanding with

these gentlemen—I am not asking for your understanding,
512 but you had some understanding by conversation with these gentlemen as to a basis to be adopted for the division of the stock between the several mills, did you not?

Mr. FLANDERS: Now wait a minute. I object to that, and I instruct the witness that he is not at liberty to answer the understanding, but to state what was said and done.

A. I don't know as I can state what was said or done. I don't know what the rest of them subscribed for, and I don't know as I remember what I subscribed for.

Q. Did you hear any discussion about the use of the average daily output as a basis?

Mr. FLANDERS: Objected to as irrelevant, incompetent, immaterial, leading and suggestive.

A. The daily output was discussed, of course.

Q. What was your answer?

A. I say the amount of the daily production of the mills was discussed, that we could probably contract with.

Q. Was that discussed as a basis for the division of the stock of the General Paper Company?

Mr. FLANDERS: That is objected to for the same reasons and the witness is instructed to answer what was said and done.

Mr. KELLOGG: I am simply asking if it was discussed between you.

Mr. FLANDERS: Oh, yes, we understand you. You are asking an entirely different question.

Mr. KELLOGG: Please read what I asked.

The question was read.

513 Mr. FLANDERS: Well now, if you want to be fair with this witness as you wish me to be, you must see that your question goes beyond what you say it does. The question is whether it was discussed as a basis for the issuance of the stock?

Mr. KELLOGG: Yes.

Mr. FLANDERS: Now you are simply asking him whether it was discussed. He is answering the question that it was discussed as a basis on which to make contracts. Now I instruct you, Mr. Witness, that if you answer this question, you are to answer what was said and done, not give your understanding of it nor your inference of it nor your suspicion of it, or anything of the kind, except to tell what was said and done.

A. Well sir, I don't remember what was said.

Q. Do you mean by that that you can't remember even the substance of what was said?

A. Not at that meeting, I don't understand. I can't remember the substance.

Q. Do you remember any meeting, either on the 26th of May,

1900, when you organized, or prior thereto, when the subject was discussed between you gentlemen of using the daily output or average daily output of these mills as a basis for the distribution of the stock?

Mr. FLANDERS: Objected to as irrelevant, incompetent leading and suggestive.

A. There were a great many matters discussed as to the distribution of this stock, in offices and on the trains, and most everywhere, and I can't remember what was said or what was done.

514 Q. Is that your answer to my question?

A. Well, if I have got a good understanding of your question, it is. I will have to have the question.

Mr. KELLOGG: Read it over to him.

The question was read to witness.

A. The matter was discussed pro and con, running discussions in every way, shape and manner, prior to the organization of this stock, but to remember the dates and what was said, I don't know that I do.

Q. Do you remember any discussion, the substance of any discussion, of using that as a basis?

Same objection.

A. Why, that basis was discussed, as well as others—all bases.

Q. What basis did you agree on?

Mr. FLANDERS: That is objected to and I instruct the witness to answer what was said and done.

A. I don't know.

Q. You don't know?

A. No.

Q. What basis was finally used for the division of the stock?

A. I don't know what basis.

Q. You don't know?

A. For the division of the stock, no sir.

Q. You have no knowledge on that subject?

A. I don't remember of any basis of division of the stock, no sir.

Q. Between the various mills?

A. No.

Q. Nor any discussion of any such basis.

515 Mr. FLANDERS: Well, that has been asked and answered several times.

A. I have said there were all kinds of discussions, and that was among others, prior to the organization.

Q. Well, on the 26th of May, 1900, when you met to organize, did you discuss the basis on which you would divide the stock?

A. Mr. Kellogg; I don't remember what the discussions were on the 26th of May, 1900.

Q. Did you actually adopt a basis, prior to the organization of the General Paper Company, for the division of the stock?

Mr. FLANDERS: That is objected to for the reason that the witness must confine his answers to what was said and done.

A. I don't recall just what the basis was for the organization or the purposes of the organization.

Q. Was a basis for the division of the stock adopted?

Mr. FLANDERS: Same objection, and as asked and answered several times.

A. Why, I don't remember just what the basis was. I was trying to think what proportion my stock bore to it but I can't.

Q. It wasn't a matter of sufficient importance so that you recollect it?

Mr. FLANDERS: That question is objected to as improper and discourteous.

A. A man don't recall all the business he does, hardly, if he does much.

Q. Well, this was a matter of a good deal of importance, wasn't it?

516 A. Well, in a way, yes.

Q. This company was to handle the output of all these mills, wasn't it?

A. It was to handle anybody's mill that wanted to sell their paper through them, as I understand it,—a general selling agency.

Q. For the mills which entered into contracts with them?

A. Or mills that didn't enter into contracts as well.

Q. Did you have that understanding?

A. That was my understanding of it at the time.

Q. Did you talk about that?

A. Why, I am not positive whether we talked about that or not.

Q. Have you any recollection of discussing that?

A. The articles of association show it.

Q. They do?

A. Yes sir.

Q. And that is what you rely on?

A. That is what I rely on, yes.

Q. But you don't have any independent recollection?

A. No, nothing independent.

Q. You have no recollection as to what appears on the records, as to what was done?

A. I don't have any recollection, that is, direct recollection, that I can swear to.

Q. Well, you entered into a contract with the General Paper Company, didn't you?

A. Yes; our company did, yes.

Q. Your company did?

A. Yes sir.

Q. I show you Petitioner's Exhibit 58, which purports to be a contract between the General Paper Company and the Wisconsin River Paper and Pulp Company; you signed that, did you?

A. That is my signature, yes sir.

Q. Mr. Whiting, do you remember of ever having seen that contract prior to the day you signed it?

A. Yes sir.

Q. When?

A. Why, I don't remember just when. Our records will show—the Wisconsin River Paper and Pulp Company—when it was brought before the company.

Q. Who drew the contract?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I don't know who drew the contract.

Q. You don't know who drew it?

A. No.

Q. Who presented it to you for signature?

Same objection by defendants.

A. I think it was received by mail.

Q. Who from?

Same objection by defendants.

A. Well, I am not positive Mr. Kellogg.

Q. Was a form of contract to be entered into between these mills and the General Paper Company ever presented at a meeting at which you were present?

Same objection by defendants.

A. I think there was; I think the form of contract was settled upon.

Q. When? At what meeting?

A. I couldn't tell you, Mr. Kellogg; the minutes will show.

518 Q. At one of the meetings?

Same objection by defendants.

A. I couldn't tell you whether it was a meeting or not, or whether it was an executive committee meeting.

Q. Wasn't it the meeting of May 26th, 1900?

Same objection.

A. I can't remember.

Q. At a directors' meeting, you recollect a form of contract was presented and approved, do you?

Mr. FLANDERS: That is objected to as assuming something which

has not been shown. I object to the counsel putting words in the mouth of the witness which he has not said.

Q. Well, at what meeting was it done?

Mr. FLANDERS: He has not said it was at any meeting.

A. I don't know how those contracts were brought about, whether it was a committee meeting or what; I can't remember.

Q. You have no recollection about it whatever?

A. I don't remember.

Q. You simply happened to sign yours?

A. No.

Mr. FLANDERS: That is objected to.

WITNESS: No, I didn't "happen" to sign it. I done it intelligently.

Q. You did?

A. Yes sir.

Q. But you have no recollection of how it came about?

A. Yes.

519 Q. How?

A. As I say, we received it by mail, but from what source it came I can't swear here. From some legitimate source. I presume we received it by mail.

Q. Wasn't the form of that contract agreed on by you gentlemen at some meeting?

Mr. FLANDERS: It is objected to as leading and suggestive, and irrelevant, incompetent and immaterial.

A. I think it was.

Q. Well, now, what meeting do you think it was agreed on?

Same objection by defendants.

A. I don't know.

Q. About when?

Same objection by defendants.

A. Prior to the date of the signing of the contract.

Q. Before the organization of the General Paper Company?

Same objection.

A. I couldn't say positively, but I think not.

Q. You think it was after the organization?

A. I think the contract was after; I couldn't swear to that positively.

Q. Now you say you think it was agreed on at a meeting. Is that the substance of it?

Mr. FLANDERS: No, that wasn't your question, nor his answer. You asked him if it wasn't exhibited at a meeting.

Q. Was the form of contract agreed on at a meeting?

520 Mr. FLANDERS: I object to that for all the reasons stated, and I instruct the witness to say what was said and done; on the subject. It was not for you to construe the action of your comrades, but it is for you to state what was said and done on that subject, if anything you remember.

A. I don't remember whether it was or not, Mr. Kellogg.

Q. Was it discussed at a meeting?

A. Well, sir, I don't remember.

Q. No recollection about it?

A. I don't remember whether that is the work of a committee or a meeting; I don't remember.

Q. Was it discussed at a meeting?

A. It might have been; I don't remember.

Q. You have no recollection?

A. No sir.

Q. Have you any recollection of discussing the form of that contract with anybody?

A. Yes sir.

Q. When?

A. Discussed it at a meeting of the Wisconsin River Paper and Pulp Company directors.

Q. At any other meeting?

A. Why, I presume—well, I haven't a right to tell what I presume.

Q. No; what is your best recollection?

A. That form of contract was discussed at some time, but I can't remember when or where, prior to this time.

Q. Prior to what time?

A. Prior to the time it was sent for my signature, or acted upon by the Wisconsin River Paper and Pulp Company.

Q. You have no recollection of what that meeting was?

A. I don't recall what meeting.

521 Mr. FLANDERS: That is objected to for all the reasons heretofore stated, and also upon the ground that it has been asked and answered anywhere from three to ten times.

Q. Have you any recollection of discussing the fact with the other directors of the General Paper Company, about the date of its organization, that such a contract would be entered into, between any of the companies and the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, leading and suggestive.

Q. Why, I can't recall any meeting that that was discussed at. It might have been discussed, but I can't recall it.

Q. How many mills went into the General Paper Company and made a contract with it at first?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and already proved in the record.

A. I don't know; I don't know how many there were.

Q. Don't know anything about it?

Mr. FLANDERS: Wait a minute. That is objected to as improper and discourteous, and assuming a fact not shown in the case.

Q. Please answer.

A. That I don't know anything about it?

Q. Do you know anything about it?

A. Oh, yes.

Q. Well, state what you know.

A. There were several mills.

Q. Which ones?

A. The Kimberly and Clark Company; and the Atlas Paper Company.

Q. The Combined Locks Paper Company?

A. I am not positive whether they came in at first or not.

522 Q. C. W. Howard Company?

A. I think they did, yes.

Q. John Edwards Manufacturing Company?

A. Yes.

Q. Nekoosa Paper Company?

A. Yes.

Q. Centralia Pulp & Water Power Company?

A. Yes.

Q. Grand Rapids Pulp & Paper Company?

A. Yes.

Q. Wisconsin River Paper and Pulp Company?

A. Yes.

Q. Wausau Paper Mills Company?

A. I am not so positive about these Edmonds interests up there; whether they were in on the first—

Q. Tomahawk Pulp and Paper Company?

A. I think they were in.

Q. Dells Paper and Pulp Company?

A. Yes.

Q. Falls Manufacturing Company?

A. Well, that is one of the Edmonds interests, and I am not so positive, but I think, however, they were in.

Q. The Hennepin Paper Company?

A. No, I don't think they were one of the original company.

Q. You don't think they were?

A. No.

Q. Now, Mr. Whiting, did you ever have any talk with any officer or agent of the Itasca Paper Company, joining this combination and making the General Paper Company its selling agent?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and assuming that a combination exists, which has not been shown, as the Government of the United States is now endeavoring to prove, and as leading and suggestive.

A. I don't know as I can recall the officers of the Itasca Paper Company.

523 Q. Do you know Mr. Bossard?

A. Bossard? Yes, just know him.

Q. Did you ever have any talk with Mr. Bossard about making the General Paper Company its selling agent?

Mr. FLANDERS: Now just wait a minute. (After conferring with Mr. Winkler) That is objected to as irrelevant, incompetent, and immaterial, and not within the issues and cot within the scope of any authority possessed by the witness and not a part of any transaction in which he was competent to act, and therefore I instruct the witness that he need not answer.

Q. Do you decline to answer?

A. Under the advice of my attorney I do.

Q. Did you on or about February 5, 1902 (which is the date which the Itasca Paper Company entered into a contract with the General Paper Company making it its inclusive selling agent for certain grades of paper) have any conversation with Mr. Bossard of that company about entering into that contract with the General Paper Company?

Mr. FLANDERS: Same objection and the same advice.

WITNESS: Same advice not to answer?

Mr. FLANDERS: Yes.

Q. Do you decline to answer?

A. Under the instruction of my attorney, yes.

Q. Do you know who carried on the negotiations with the Itasca Paper Company which culminated in its entering into this contract?

A. I don't know.

Q. Did you?

A. I don't remember that I had a word to say to him. I don't remember the—

524 Q. No recollection of having any conversation with him about it?

A. I don't recollect, in fact I don't remember that I knew Mr. Bossard at that time.

Q. Do you know the Northwest Paper Company?

A. At Cloquet?

Q. Yes.

A. Yes sir.

Q. Who are the officers of that company?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. When you talk about principal officers, I don't know.

Q. Well, do you know H. C. McNair?

A. Yes.

Q. Do you remember of Mr. McNair attending any meeting when the subject of organizing a selling agency was discussed?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Yes.

Q. Where was that held?

A. I think I met him at Appleton, or they met at Appleton with us there.

Q. Did you ever have any talk with Mr. McNair about entering into a contract with the General Paper Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and no proper foundation laid, and not within the scope of any agency of the witness, and not a part of a transaction in which he was competent to or did act as the agent of anybody.

A. Yes, I think I did.

Q. Where?

A. Appleton.

Q. What was said?

A. Oh, I don't remember what was said.

Q. What was the substance of what was said?

525 Mr. FLANDERS: Wait just a minute. When was this, before or after the organization of the General Paper Company?

WITNESS: Oh, it was way along before the organization of the General Paper Company.

Mr. FLANDERS: Well, I instruct you that you need not answer.

A. I don't remember of having any conversation, I can't place any date or place in my mind I had conversation with him prior to the organization, to try to get him in.

Q. Trying to get him in, you say?

A. Trying to get them to take stock, and asking them to take stock.

Q. Did he decline at that time?

Mr. FLANDERS: That is objected to for all the reasons stated, and the witness is instructed that he need not answer.

WITNESS: Under the advice of my attorney I refuse to answer.

Q. His name is C. I. McNair, is it?

A. I don't know.

Q. I think I said H. C. McNair. I wish to correct that.

A. I don't know what his name is. I know it is McNair.

-Q. Well, did you have any other conversation with him than that you have mentioned?

Same objection; all of them renewed.

A. I think that I met him down at Chicago one day and had a talk with him in a general way.

Q. Was that at a meeting held in Chicago of the General Paper Company?

A. I don't think it was, no.

526 Q. Do you remember of his attending a meeting in Chicago in April 1902.

A. April 1902? Well, the fact is I have attended so few meetings myself that I don't remember.

Q. The Northwest Paper Company entered into a contract with the General Paper Company on April 8, 1902. Do you recollect about that time of meeting Mr. McNair in Chicago?

A. I can't say that I do.

Q. What meeting do you refer to in Chicago when you had a talk with him?

A. If I could express this in my own language I might express it.

Q. Certainly; please express it in your own language.

Mr. FLANDERS: I object to that and I insist that the question shall be put to the witness in such a form as to be intelligible, and I instruct the witness that he is not at liberty to go wandering all over the field and telling what is in his mind about any particular subject, but he is to confine himself to direct questions and direct answers to those questions.

Mr. KELLOGG: Please read the question.

Question read.

Mr. FLANDERS: Then I instruct you that you are not obliged to answer any such question as that unless it is made definite and certain.

The following question was read: "What meeting do you refer to in Chicago when you had a talk with him?"

Mr. FLANDERS: Answer that question what meeting.

A. I think that I met him in the lobby of the General Paper Company, either there or at some hotel; I can't just place it.

527 Mr. FLANDERS: Well, you have answered it.

Q. Well, go ahead and state what conversation you had with him.

Mr. FLANDERS: I object to that as irrelevant, incompetent and immaterial and not within the issues, and no proper foundation laid, and not within the scope of his agency of the General Paper Company or anybody else, or within any transaction in which he acted as agent for anybody. And I instruct the witness not to answer that question.

Q. Do you decline to answer it?

A. Under the advice of—

Q. Did you have any conversation with him about the Northwest Paper Company entering into a contract with the General Paper Company?

Mr. FLANDERS: Same objection and the same instruction.

Q. Do you decline to answer?

A. Under the advice of my attorney, yes.

Q. About when was that meeting?

A. Well, it was just prior to his going in. He had concluded to go in, however.

Q. He had concluded to go in?

A. Yes.

Q. How do you know he had concluded to go in?

Mr. FLANDERS: Never mind. That is objected to for the same reasons and the same instructions.

Q. Do you decline to answer it?

A. Under the advice of my attorney, yes.

Q. Did you have any talk with him about his going in?

A. I don't remember that I did.

Q. Or the Northwest Paper Company going in?

A. I don't remember that I did.

528 Q. You were at that time the vice president of the General Paper Company?

A. Yes sir.

Q. You always have been?

A. Yes sir.

Q. Did you carry on any negotiations with the Northwest Paper Company, through Mr. McNair or anyone else, in reference to that company's making the General Paper Company its selling agent?

A. For the General Paper —?

Q. Yes.

A. No sir.

Q. Who did?

A. I don't know.

Q. Did you have any conversation with him about it?

Mr. FLANDERS: That is objected to for the same reason and you are instructed not to answer that question.

Q. State whether you did or not have any conversation with Mr. McNair in which you discussed with him the subject of the Northwest Paper Company making the General Paper Company its general agent?

Mr. FLANDERS: Same objections and same instructions.

Q. Do you decline to answer?

A. At what time?

Q. Prior to the time it went into the combination.

WITNESS: Under the instructions of my attorney yes, I decline to answer.

Q. Did you have any conversation with Mr. McNair, prior to the time his company entered into this contract with the General Paper

Company making it the exclusive selling agent, about his company making any such contract?

Mr. FLANDERS: Same objection, same instruction.

WITNESS: Under the instructions of my attorney I refuse to answer.

Q. Do you not know from your own knowledge that for
529 nearly two years the Northwest Paper Company refused to make the General Paper Company its selling agent?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and I instruct the witness he need not answer that question.

A. Under the instructions of my attorney I refuse to answer.

Q. Did you on behalf of the General Paper Company have conversations with Mr. McNair in which you tried to induce him to make a contract for the Northwest Paper Company?

A. I don't remember of any such conversation.

Q. No recollection?

A. No recollection.

Q. Didn't you say a few minutes ago that you asked him at Appleton to go in?

A. That is prior to its organization.

Q. That was prior to this organization?

A. Yes sir.

Q. Then you did, prior to its organization, ask him to go in?

A. Before any of us was in, at a meeting.

Q. And did he decline?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

Q. Please answer.

A. Why, if I understand the situation correctly, there was a part of the company that thought it was best to go in and part thought it was best to go out or to stay out; that is, the Northwest Paper Company, if I remember it correctly.

Q. And so they staid out?

A. They staid out.

Q. Now then, who carried on the negotiations which resulted in their coming in?

Mr. FLANDERS: That is objected to for all the reasons
530 stated, and asked and answered.

A. I don't know who carried on the negotiations.

Q. You don't know anything about it?

A. No sir.

Q. You did not?

A. No sir; I don't remember of having anything to do with it.

Q. Now what companies which afterwards joined the combination did not go in at first?

Mr. FLANDERS: That is objected to:

Q. The Northwest Paper Company was one, was it not?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. The Northwest Paper Company I think was one.

Q. Is the Petoskey Fibre Paper Company another?

Mr. FLANDERS: Same objection, irrelevant, incompetent and immaterial.

A. I am not so sure about that. I am not so sure; I think they were, however.

Q. The Riverside Fibre and Paper Company another?

Same objection.

A. I don't think they were in existence at the time of the organization, yet I am not so positive about that.

Q. Wolf River Paper and Fibre Company?

Same objections.

A. I don't know when they did take stock, I am sure.

Q. Menasha Paper Company another?

Same objections.

A. I don't think the Menasha Company was in the original company.

531 Q. The Rhinelander Paper Company?

A. They were not in existence.

Q. The Consolidated Water Power and Paper Company?

A. They were not in existence at the time.

Q. The Flambeau Paper Company?

A. I don't remember when the Flambeau Company did; I don't know whether they were original stockholders or not. I think not, however.

Q. Did you carry on any of the negotiations with any of these companies which resulted in their going in?

Same objection.

A. I don't recall of having carried on any negotiations.

Q. Did you have any conversation with any of the officers of any of these companies about their coming in?

Same objection.

A. That is a pretty broad question, but I think that I had conversation with some of the companies about coming in.

Q. Well, who?

A. I don't remember just whom.

Q. Do you remember having a conversation with any of the officers of any of these companies about coming in?

Same objection.

A. Really, I don't remember.

Q. You don't remember?

A. I haven't taken an active part in the General Paper Company at all.

Q. You have not?

A. No sir.

Q. You were quite active in its organization, were you not?

Mr. FLANDERS: Same objection, calling for the opinion of the witness.

A. Well, I don't think that I was particularly active.

532 Q. You don't think so. Well, did you have any conversation with any officer of any other company to get the company he represented to go into this combination?

Mr. FLANDERS: That is objected to as leading and suggestive, and irrelevant, incompetent and immaterial and on the ground that the witness has already testified that he did not have any conversation with the officers of any company on behalf of the General Paper Company.

Q. Is that true?

A. On behalf of the General Paper Company?

Q. Yes.

A. That is true.

Q. You did not?

A. I don't remember of having.

Q. Do you manufacture paper which you call butcher's fibre?

A. No sir.

Q. You don't manufacture any of that?

A. No sir.

Q. Do you know what companies do?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. It is a pretty leading question. I don't know as I could name the mills that manufacture butcher's fibre. There is none of them, I guess, that makes it entirely. I think Mr. Kimberly makes some. I think the Wausau Paper Mills Company makes some and I think the Dells Paper and Pulp Company, and I think the Menasha Company makes some. I think perhaps there are, oh, I should judge, perhaps seven or eight of the mills that sell through the General Paper Company that make some butcher's fibre. There might be more and there might be less.

533 Q. Did you ever hear of a pool on butcher's fibre between any of the defendant mills?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and the witness is instructed that he need not answer.

Q. Do you decline to answer?

A. Yes, and I don't believe everything I hear, either.

Q. Do you know Mr. E. A. Edmonds?

Same objection.

A. Same instructions?

Mr. FLANDERS: Well, if you know Mr. Edmonds, there isn't any law in the United States court that prevents you from knowing him.

A. Yes, I know him.

Q. Do you know of an arrangement whereby certain of the defendant mills made payments through the General Paper Company or some officer of the General Paper Company to certain other of the defendant mills which manufacture butcher's fibre.

A. I don't know anything about it.

Q. You don't know anything about it.

A. I don't know anything about it.

Q. Did you ever hear of it?

Mr. FLANDERS: That is objected to for all the reasons stated, and you are instructed that you are not obliged to tell everything you hear including that.

Q. You don't know anything about any such arrangement?

Mr. FLANDERS: Objected to as asked and answered and for all the reasons heretofore noted.

Q. Do you know anything about any such arrangement?

A. I don't know anything about the butcher's manila end
534 of it at all.

Q. You never heard of it?

Mr. FLANDERS: You needn't answer that.

Q. Did you ever hear of such an arrangement between any of these parties?

Mr. FLANDERS: That you needn't answer.

Q. Do you decline to answer?

A. Yes sir, under the instructions of my attorney I decline to answer.

Q. Were you present at the last annual meeting of the General Paper Company held in December last?

A. December? I think I was. I think I attended all their annual meetings.

Q. Was anyone elected as a director from the Petoskey Fibre Paper Company?

Mr. FLANDERS: If you know.

A. I don't remember.

Q. You don't know.

A. I don't remember.

Q. Do you know Mr. Cheeseman?

A. I have met Mr. Cheeseman.

Q. Do you know Mr. Aiken?

A. I have met Mr. Aiken once or twice, probably.

Q. Do you know whether anybody was elected from that company?

A. I do not, no; the records will show who was elected.

Q. Did you hear the subject discussed as to the Petoskey Fibre Paper Company renewing its contract?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial, and you are instructed that you need not answer that.

Q. Do you decline to answer?

A. Under the advice of my attorney I do.

Q. Was there any discussion at that meeting about dropping Mr. Cheeseman from the board of directors because his company had not entered into a contract renewing his contract, making the General Paper Company its selling agent?

535

Mr. FLANDERS: Same objection and same advice.

A. Under the advice of my attorney I refuse to answer.

Q. Did you have any negotiations or conversations with Mr. Cheeseman to induce him to make a new contract?

A. I don't think I did, no.

Q. You never have?

A. I don't think I ever did, no.

Q. Do you know who did carry on the negotiations?

A. I don't know.

Q. Do you know Mr. Benjamin, a reporter for the Milwaukee Sentinel?

A. I don't think I know him.

Q. You don't know him?

A. No, not by name.

Q. Do you remember of having a conversation with Mr. Benjamin, or a reporter of the Milwaukee Sentinel, about May 12, 1905, or May 11th?

Mr. FLANDERS: Just wait a minute. That is objected to as irrelevant, incompetent, immaterial and not within the scope of his agency for the General Paper Company or anybody else, and not a part of the transactions in which he acted for the General Paper Company or any of these defendants, and he is instructed that he need not answer.

Q. Do you decline to answer?

A. Under the instructions of my attorney I refuse to answer.

Q. Did you then and there state to Mr. Benjamin in substance as follows, speaking of the General Paper Company, "This company contracts for the total output of all the paper mills on the Fox river for the year, paying a stated price, thus doing away with such competition as will do none of the manufacturers any good."

A. No sir.

536 Q. You didn't say that?

A. No sir.

Q. Nor the substance of that?

A. No sir.

Q. To Mr. Benjamin?

A. No sir.

Q. You recollect that.

A. I recollect that thing; I certainly do. That is only the 12th day of this May. It isn't back in 1890.

Q. No.

A. 20th of May, 1890.

Q. You have no doubt about that at all.

A. No.

Q. But you can't recall anything that took place prior to the meeting of the General Paper Company?

A. I have told you everything that I recollect.

Q. You have?

A. Yes sir.

Q. Do you mean to say, Mr. Whiting—

Mr. FLANDERS: Now wait a minute.

Q. —that you as one of the principal men caused the General Paper Company to be organized to handle more than ten million dollars of products per year and that you don't recollect the plan on which it was organized?

Mr. FLANDERS: Just wait a minute. That is objected to as irrelevant, incompetent, immaterial, improper and discourteous, and as an affront to the witness and probably intended as such, and as assuming things which he has not testified to. I instruct the witness that he is not obliged to answer a question put in that way.

Q. Do you decline to answer?

A. I decline to answer it, yes sir.

Q. You have no recollection of an understanding between you gentlemen as to the basis of the division of the stock
537 at all?

Mr. FLANDERS: That is objected to for all of the reasons hereinbefore stated, and as having been asked, and on the ground further that the evidence of any understanding must be by what was said and done.

Q. Do you decline to answer it?

Mr. FLANDERS: You are instructed that you are not obliged to answer that question.

A. Under the instructions of my attorney I decline to answer the question.

Q. You have no recollection of meeting with these gentlemen and agreeing on the form of a contract?

Mr. FLANDERS: That is objected to for all the reasons stated, and you are instructed to tell him again, if you can remember, what was said and done on that subject, but you are not at liberty to put your construction upon what was said and done and give your impressions of it.

A. I don't remember just exactly what was said or done on the subject of that contract; I don't remember whether it was referred to some committee to draw up a contract or whether some attorney drew it up. I don't remember.

Q. You remember that a contract was adopted at some meeting, do you?

Mr. FLANDERS: That is objected to for all the reasons stated and as having been asked and answered.

Q. Well, do you answer it or not?

Mr. FLANDERS: Wait a minute. The other side is somewhat impulsive, and I can't keep up with him. I have done my level best. Read the question, please.

538 The question was read.

Mr. FLANDERS: Now I instruct you that you are at liberty to say what was said and done upon that subject.

Q. I ask you if you will answer that question or if you will not?

Mr. FLANDERS: Then I instruct you that you are not obliged to answer it in that form.

Q. Do you decline to answer it?

A. Under the instructions of my attorney, I do.

Q. Did you at any meeting prior to May 26, 1900, agree with these gentlemen on a form of contract which should be entered into by the several mills making contracts with the General Paper Company?

Objected to as irrelevant, incompetent, immaterial, calling for the opinion of the witness, leading and suggestive, and to be answered by the witness, if at all, by telling what was said and done on that subject.

A. I don't remember of having agreed on any form of contract, no sir.

Q. Do you remember of having agreed with them that the several mills should go into this General Paper Company?

Mr. FLANDERS: I instruct the witness to confine his answers to what was said and done on that subject, not to give his construction.

Q. Please answer the question.

A. At what time?

Q. Prior to May 26, 1900.

A. Now I would like the question. (Question read.) I don't know that any particular agreement was made until the stock was subscribed and the company was organized.

Q. Do you mean to say that, prior to the organization of this company, you had no agreement with those gentlemen—verbal agreement—for the organization of this company or making these contracts?

539 Mr. FLANDERS: That I object to for all the reasons stated, and I instruct the witness to confine his answer to what was said and done, on that subject.

Q. Do you decline to answer?

A. I have not declined yet, I am going to see what the question is, and then I will tell you.

Question read by the examiner.

A. I don't remember of any verbal agreement.

Q. Do you remember of any conversation?

A. There might have been conversations concerning it, but I don't remember of any agreement.

Q. Well, do you remember of any conversation about it?

A. I don't remember of any detailed conversations.

Q. I don't want details; I want the substance.

Mr. FLANDERS: Objected to as incompetent, irrelevant and immaterial.

Q. Do you remember the substance of any such conversation?

A. Regarding this contract?

Q. Yes sir.

A. No sir, I don't remember the substance of any such contract.

Q. You don't remember the substance of any talk with these gentlemen, that these various companies should go in and make contracts? Is that true?

Mr. FLANDERS: Objected to as irrelevant, incompetent, immaterial, leading, and suggestive.

540 A. I will have to have the question, because when I am listening to the objection I lose the gist of the question.

Mr. KELLOGG: Yes, you are listening to the objection a good deal more than you are to the question.

WITNESS: I am listening to both of you.

Mr. FLANDERS: I object to that as improper and I move that it be expunged from the record.

Mr. KELLOGG: Please read the question.

Mr. FLANDERS: And it is not the first time that the counsel has transgressed the rule, and I shall call attention to them as they come along.

Question read by the examiner.

A. Why, I don't remember the substance. We talked matters over about going in and contracting with this company. The company would not have been organized probably unless there was some business in sight for it.

Q. But you recollect no conversation along that line?

A. Why, I cannot recollect any specific conversation.

Q. I am asking for the substance of any conversation.

A. I don't recollect of a conversation and who I had it with. I know those matters were talked over in a running conversation that way, five or six years ago, and I don't remember what they were.

Q. You think the corporation just happened to be organized, do you?

A. No, I don't think so.

541 Q. How came it to be organized?

A. Through a necessity.

Q. What necessity?

A. To head off the abuses of trade.

Q. What were the abuses of trade?

A. Charge backs by printers and charge backs by tradesmen.

Q. What do you mean by "charge backs"?

A. I mean what I say.

Q. Well, what are they?

A. Charge backs.

Q. What do you mean by charge backs?

A. Charging you back with paper that wasn't used; charging us with all kinds of abuses; cutting off paper and selling it to Jews for half a cent a pound and we didn't get the half cent. All kinds of abuses were heaped on us. Selling on ten days' time and taking ninety days.

Q. What else?

A. A multitude of abuses.

Q. Yes; name them.

A. Now, if I am expected to name these abuses I have got quite a job.

Q. Go ahead; that is what we want.

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

Q. Go ahead and name them.

A. There are a good many abuses that are by hearsay. One was pressman's tips of baby-carriages and horses and one thing or another; but it got to be so that the invoice price of the goods had not very much to do with what you would get out of it after they got through. Another abuse: so many papers to the pound. We

had no way to check back whether they get the papers or not ; had to take their word for it.

542 Q. Now one at a time. Take that abuse, so many papers to the pound.

A. Yes sir.

Q. That is, that your paper should weigh so that it would make so many papers to each pound of paper which you sold ; is that what you mean ?

Mr. FLANDERS : I object to the counsel putting the answer in the witness' mouth.

Q. Well, please explain what you mean by so many papers to the pound.

Mr. FLANDERS : Objected to as incompetent, irrelevant and immaterial.

A. Well, I mean what I say.

Q. Well, go ahead and explain it.

A. Some of them—I mean so many papers to the pound, eight papers to the pound,—or whatever the size and weight, etc.

Q. What is another one of the abuses ?

A. Cutting off paper and charging it back as waste, and beating us on time.

Q. Cash discounts another ?

A. Yes sir. Cash discounts cut no figure to amount to anything with some of them.

Q. It did not ?

A. No sir.

Q. Now these are the abuses, you say, that the General Paper Company was organized to correct ?

A. I say a part of the abuses.

Q. Well, give us the rest of them.

Same objection by defendants.

543 A. I can't give you all the rest of them. The waste and all the kinds of abuses, the abuses that technically creep into a business. There were lots of them.

Q. How was the General Paper Company to correct them ?

Same objection by defendants.

A. The General Paper Company corrects them after their system. If there is any abuse exists, as I understand it, it doesn't make any difference where it is, they go any see it.

Q. These abuses have been corrected, haven't they ?

Same objection by defendants.

A. Yes sir.

Q. They don't return waste now at full price ?

A. They never did.

Q. Well, do they return it at any price?

Same objection by defendants.

A. Very little waste returned.

Q. Cash discounts have been done away with, haven't they?

Mr. FLANDERS: Same objection, and as putting the answer in the witness' mouth.

Q. Well, have they been done away with—cash discounts?

A. Well, I should say not.

Q. You should say they had not?

A. I should say they had not.

Q. Can you give us the rest of the abuses that this General Paper Company was organized to correct?

Mr. FLANDERS: He has already told you what it was. You have asked him and he has answered it; now you ask him again.

544 A. I think I have given you a pretty good jag of abuses. If you were in the paper business you would think so.

Q. Was low price one of the abuses?

Mr. FLANDERS: Objected to as leading and suggestive and not a proper question.

Q. Please answer.

A. At the time the General Paper Company was organized?

Q. Yes.

A. Why, if I understand it correctly, prices were higher then than they are now,—at the time it was organized, the current business, regular business.

Q. Was the low price of news print paper one of the abuses to be corrected?

Mr. FLANDERS: That is objected to for all the reasons stated and the witness is instructed to answer what was said and done, to confine his answer to that.

A. No, I don't know as low prices was. Prices were talked, prices discussed when any two paper makers were together, I don't care where they were. If they were in heaven they would be talking prices; if in hell I am sure they would.

Q. Then the correction of these abuses are the only reasons that you can give for the organization of the General Paper Company?

Mr. FLANDERS: That is objected to for all the reasons hereinbefore stated, and for the further reason that the witness is not called upon to assign any reasons for the organization of the General Paper Company. He is not competent to assign any.

545 Q. Do you decline to answer?

A. Let me have that question, so I can know where I am at.

The question was read by the examiner.

WITNESS: You know us fellows are not educated in the law who have to saw wood 365 days in the year.

The question was again read.

A. Oh, there are other reasons probably.

Q. What are they?

A. Well—one reason with me individually was the International Paper Company was organized with 102 machines. They could go to a customer like the Chicago Herald, the Pioneer Press, with an argument that they might contract with them for safety, that flood or fire would not damage all their mills at a time. There are many, many papers in Chicago—several papers in Chicago—that use more production every day than my mill makes and more than lots of the other individual mills make; and I thought that we would be better enabled to get after this big trade.

Q. Get after what big trade?

A. Why, any big trade.

Q. What is that?

A. Any big trade—newspaper trade.

Q. By acting through one selling agent?

A. By acting through one selling agent, yes sir.

Q. Did you attend a meeting, about February 15, 1900, in New York, of the American Paper and Pulp Association?

A. Why, I don't remember whether I was there or not. February 15, 1900?

546 Q. Yes sir.

A. That is a long shot for my memory. I don't recollect whether I was there or not.

Q. Do you recollect any discussion by you and the other gentlemen present about a standard form of contract to be used with publishers?

A. What time was that?

Q. February, 1900.

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. I think the discussion I had about that was long before that, before the General Paper Company was organized, at the time I was in New York on that business.

Q. That is the time I mean; this is before the General Paper Company was organized.

A. This is long before the General Paper Company was thought of.

Q. Well, this is February, 1900.

A. I don't recollect, Mr. Kellogg, whether I was there or not.

Q. Well, you did afterwards adopt the uniform contract, didn't you,—the General Paper Company?

A. Well, the contracts will show. I don't know what they adopted. I have very little to do with the General Paper Company.

Q. You don't know what contracts they used with the customers?

Mr. FLANDERS: Oh, he hasn't said any such thing. I object to the counsel putting the answer in the witness' mouth, and assuming facts to be testified by him which he has not stated.

547 Q. Do you know what form of contracts they use with their customers?

A. No.

Q. You don't?

A. Not specifically, no.

Q. You don't know whether they are uniform or not?

A. I don't know whether the contracts are uniform or not; don't know when they have been changed.

Q. That is a matter for the General Paper Company to handle?

A. That is a matter for the General Paper Company.

Q. You haven't had anything to do with it?

A. Haven't had.

Q. Are you on the executive committee?

A. No sir.

Q. And you don't interfere with the contracts they make?

Mr. FLANDERS: Now that is objected to for the same reasons.

Q. Well, is that right or not?

Mr. FLANDERS: Why, don't you put the question right, first? You put a question and an answer in his mouth which he has not given at all.

Mr. KELLOGG: Well, now, if you want to testify for this witness, perhaps you will be given an opportunity. I want the witness to testify for himself.

Mr. FLANDERS: Then you will find an objection every time that you put an improper question.

Mr. KELLOGG: I will withdraw the last question, if you object to it.

548 Q. Have you had anything to do with the adoption of the form of contract which is used by the General Paper Company?

A. I don't know that I have.

Q. Who did fix that contract?

Mr. FLANDERS: That is objected to as asked repeatedly, and answered, and irrelevant and immaterial.

A. I couldn't say just who fixed the contract, whether the executive committee or the sales agent, or how it was. I couldn't say just exactly how the contracts are fixed.

Q. Who makes the contracts with the customers?

A. The sales department, as I understand it.

Q. Do you have anything to do with that?

A. Nothing whatever.

Q. That is entirely in the hands of the sales department, is it?

A. The sales department.

Q. Now, you said that sometime before the organization of the General Paper Company you had some discussion in the East about a uniform contract; is that correct?

A. Well, if my memory serves me right I was sent on there by—

Mr. FLANDERS: Never mind, Mr. Whiting.

Mr. KELLOGG: Now just wait.

Mr. FLANDERS: That is a question that may be answered by yes or no. Now read it and let him answer it.

The question was read.

A. Yes, I have had.

Q. How came you to go there and have that discussion?

Objected to by Mr. Flanders as irrelevant, incompetent and immaterial.

549 A. I think the suggestion was made by some of the eastern people, if my memory serves me right.

Q. Who were you sent on by?

Same objection by defendants.

A. I don't know as I was sent on by anyone.

Q. You started to say that if your memory served you right you were sent on, and then you stopped. Now what did you mean by that?

A. I mean this: That at one time I was president of the Western Paper Trade Association, and I think once or twice I was sent on there as a delegate to the convention. Whether that occurred at this time or not, or by this concern, I never was sent to—

Q. Did you have any discussion then as to uniform contracts to be used for the selling of paper?

Mr. FLANDERS: Same objection. Have you stated when it was, Mr. Witness,—how long ago it was? How long before the General Paper Company was organized?

WITNESS: I think it was a year or so before the General Paper Company organization. He (Mr. Kellogg) is talking about February. I don't understand it; I don't remember, you know. I can't remember five or six years ago where I was at.

Mr. FLANDERS: When do you say it was, according to your recollection?

WITNESS: Why, Mr. Flanders, I haven't a five year old memory.

550 Mr. KELLOGG: No, I guess not.

WITNESS: I don't rely on my memory. (Or a ten year old memory.)

Q. Now, Mr. Whiting, did you adopt a uniform contract at that meeting?

Mr. FLANDERS: What meeting?

Mr. KELLOGG: In New York.

Mr. FLANDERS: Objected to as irrelevant, incompetent, and immaterial.

A. No. Not at the meeting I was at.

Q. What?

A. There was no contract adopted at the meeting that I was at, I don't think.

Q. It was simply discussed?

A. Simply discussed.

Q. After the organization of the General Paper Company, did you have any conversation with any of the officers of the International Paper Company about keeping out of this territory west of Chicago?

Mr. FLANDERS: That is objected to as irrelevant, incompetent immaterial, and not within the issues, and the witness is instructed that he need not answer that question.

Q. Do you decline to answer the question?

A. Under the advice of my attorney, I do. I would just as soon, though.

Mr. KELLOGG: I think that is all, Mr. Flanders, at present.

Mr. FLANDERS: Cross-examination waived.

551 The witness was excused at this time, promising to return whenever requested.

Subscribed and sworn to before me this — day of —, 1905.

Special Examiner.

552 James G. Flanders, Volume 9.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of W. Z. Stuart.

6th Day, May 24, '05.

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Re-cross examination	

ROBERT S. TAYLOR,
Special Examiner.

WEDNESDAY, May 24, 1905.

313 Federal Building, Milwaukee, Wisconsin.

The hearing was resumed before the examiner at ten o'clock a. m., at the above time and place, all parties being present.

W. Z. STUART, a witness called and sworn on behalf of the petitioner, was duly sworn by the examiner, and testified as follows :

By Mr. KELLOGG :

Q. What is your full name ?

A. William Z. Stuart.

Q. Where do you reside ?

A. Neenah, Wisconsin.

Q. Are you an officer of the General Paper Company ?

A. Yes sir, second vice president.

Q. How long have you been ?

A. I have been second vice president since September, I think, of 1903.

Q. Before that what position did you occupy with the General Paper Company ?

A. Manager of sales.

W. Since you became vice president did you have charge of the sales department ?

A. Yes sir.

Q. The sales manager and other salesmen, are they under your direction ?

A. Yes sir, and the freight department.

Q. What is the freight department ?

A. Why, it is traffic manager, if you please, and an assistant.

Q. You have charge of the shipments of products ?

A. In that way, yes sir.

Q. During what time were you the sales manager ?

A. I took charge of the General Paper Company May 6, 1901.

Q. Before that time had you any position with the General Paper Company ?

A. Yes, sir.

554 Q. What position ?

A. I was a stockholder, and I believe a director.

Q. As sales manager, what do you have charge of ?

A. Why, the selling of paper produced by the mills and certain grades of paper.

Q. That is, produced by the mills that have these contracts that have been put in evidence ?

A. Yes sir.

Q. Now those kinds of paper, you may state what they are.

A. News, hanging, novel, box lining, fibre and manila papers.

Q. Those are the kinds of paper covered by the contracts ?

A. Yes sir.

Q. As vice president you have general charge of the same subject.

A. Yes sir.

Q. Who are the sales managers and salesmen and assistant managers, at the present time?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I have all the authority as second vice president that I had as manager of sales, but — ease my work I gave the title of manager of sales to John A. Davis. There is no assistant manager at present. Mr. E. B. Mendsen has charge of the wrapping department, and does other work that I assign him or that he thinks it wise to do in his own behalf. Mr. A. C. Allen is in the print department and does some work in the wrapping department. Mr. L. B. Steward is in the print department. Mr. B. F. Martin is in the plain department, and salesman; and Mr. T. E. Martin, I think it is, (I have forgotten for the time being his initials, I think that is correct), is all around salesman; Mr. W. C. Thummel is in the sales department generally. I think that is the present force.

Q. Mr. Mendsen has been one of the salesmen for some years?

A. Yes sir.

Q. And Mr. A. C. Allen also?

A. Yes sir.

Q. As such salesmen they have made contracts with newspaper publishers for the sale of print paper, have they not?

A. At my direction.

Q. They have signed such contracts and delivered them?

A. I presume, yes.

Q. To whom do you generally sell news print paper?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Men who print papers, either from rolls or sheets, publishers of various classes.

Q. Mostly newspapers?

A. Mostly newspapers.

Q. Where do you sell the news print produced by these mills? I mean the territory, Mr. Stuart.

A. We sell it wherever we can. We sell Binghamton, N. Y., and Elmira.

Q. I am talking now of news print paper.

A. That is what I am talking about. It may be possible that one of those contracts is lost to us now, but it is my memory that both are still on our books.

Q. Which ones?

A. Elmira and Binghamton.

Q. Where do you sell the most of it?

Objected to as irrelevant and immaterial.

A. We sell the most of it, by reason of freight rates west of Chicago, in Chicago, Milwaukee, Detroit.

Mr. FLANDERS: You must speak a little louder; I can't hear you.

WITNESS: We sell in that territory which the freight permits us to sell most advantageously.

Q. Well, you sell through Wisconsin?

A. Wisconsin, Indiana, Ohio, Michigan, Kentucky, the entire South, the entire West and as far to the east as we can go and be competitive with our freight rates.

Q. Do you sell west of the Rocky mountains?

A. West of the Rocky mountains?

Q. Yes.

A. We sell as far as the coast.

Q. To whom do you sell on the coast—to what newspapers?

Objected to as irrelevant and immaterial.

A. Well, I haven't a list of them, but we have sold several and are selling several.

Q. Name them.

A. We are selling—one is as good as a dozen—it is the biggest paper—

Q. I want them all.

A. I can't give you them all.

Q. Don't your records show?

A. The records show, yes.

Q. What newspaper are you selling west of the Rocky mountains?

A. We are selling the Los Angeles Times.

Q. What others?

A. We are selling—I don't remember without the book. There is one in Los Angeles whose name I have forgotten entirely; the contract is on our books. Whether it is being enforced or not I don't know.

Q. Any others on the coast?

A. Yes sir.

Q. What others?

A. I would have to refer to the record; I couldn't tell you.

Q. Will you please refer to the record and produce it, showing to whom you sell on the coast?

A. Why, I haven't the record here.

Q. You have not the record here.

A. No sir.

557 Q. Will you produce it?

A. Yes.

Q. All right. Please make a memorandum of it. You sell in St. Paul?

A. Yes sir.

Q. Minneapolis?

A. Yes sir.

Q. Duluth?

A. Yes sir.

Q. Des Moines?

A. Yes sir.

Q. Kansas City?

A. Yes sir.

Q. St. Jo?

A. Yes sir.

Q. Sioux City?

A. Yes sir.

Q. Omaha?

A. Yes sir.

Q. Denver?

A. Yes sir.

Q. Salt Lake?

A. Yes sir.

Q. North Dakota?

A. Yes sir.

Q. Montana?

A. Yes sir.

Q. Any in St. Louis?

A. Yes sir.

Q. New Orleans?

A. Yes sir.

Q. Texas?

A. Yes sir. Atlanta.

Q. What papers in Atlanta?

A. I couldn't tell without refreshing my memory.

Q. Do your books show?

A. Davis' books will show.

Q. They are under your charge, are they not?

A. Well, in a sense, yes.

Q. Will you produce the books showing to whom you sell in Atlanta?

A. Yes sir. I am not sure of Atlanta. That was one of the reasons I hesitated.

Q. Any other city in the South that you sell news print paper to?

Objected to as irrelevant and immaterial.

Q. East of the Mississippi river?

A. Yes sir.

Q. What ones?

A. Well, I will have to refer to the record.

558 Q. Yes can't tell without referring to the record?

A. No sir.

Q. To what newspapers do you sell in Indiana?

Same objection.

A. Why, we sell a number of small newspapers through jobbers.

Q. What jobbers?

A. Bridner, Smith & Co.

Q. Where are those jobbers located?

A. Bridner, Smith & Co.

Q. What others?

A. Graham Paper Co., St. Louis.

Q. What I mean is, do you directly sell to the newspapers in Indiana?

A. I think so, yes sir.

Q. Well, who?

A. I can't tell without referring to the records.

Q. Will you produce the records showing?

A. I will.

Q. What papers do you sell in Detroit?

Objected to as irrelevant and immaterial.

A. I will produce the record.

Q. Now this paper in Binghamton, N. Y., how long have you been selling that paper?

Same objection.

A. We sold it a couple of years, at any rate; whether it was renewed this last time or not, I don't remember, but I think it was.

Q. Will your books show?

A. The books will show.

Q. Will you produce the books?

A. I will.

Q. What other place in New York?

A. Elmira, I think is another paper.

Q. Are you selling that yet?

A. I think so; the books will show.

Q. Please produce the books showing that.

559 Q. Do you sell any other news publishers direct, in Michigan? I mean east of Lake Michigan.

A. Other publishers in Michigan east of Lake Michigan?

Q. Yes sir.

A. Why, the books will show all that. It would be simply memory and the contracts are changing.

Q. Now in selling to publishers of newspapers you deliver the paper in the town where the publisher is situated, do you not?

A. Sometimes; mostly.

Q. In other words, you ship it to them, you paying the freight?

A. We ship it to them, delivered; we don't always pay the freight.

Q. Well, you deliver it in their town; they don't buy it on board the cars at the mills?

— They buy it on board cars at their towns, generally.

Q. And the General Paper Company ships the products of these

mills into all of the States between Illinois and the Rocky mountains, does it not?

A. Between Illinois and the coast, I should say.

Q. Well, will you answer my question? It does between Illinois and the Rocky mountains, does it not?

MR. FLANDERS: That is an answer to the question. You are not obliged to answer it. The greater includes the less.

Q. You do between Illinois and the Rocky mountains, don't you?

A. Yes sir.

Q. You have done so ever since the General Paper Company was organized?

A. And before.

Q. And you sell paper to those publishers in that country?

A. Yes sir.

560 Q. And these mills did so before?

A. Yes sir.

Q. Now in making contracts with publishers, you use a printed form of contract, do you not?

A. Yes sir.

Q. The printed form is uniform in print, isn't it?

MR. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Not absolutely.

Q. I am speaking of the printed form of contract with publishers. Same objection.

A. That is what I am speaking of.

Q. It is not absolute, but it is generally uniform, isn't it?

A. It is generally uniform.

Q. Have you the contracts that you have made in the name of the General Paper Company, selling news print paper to these publishers, that are in force at the present time?

A. No sir.

Q. Where are they?

A. They are in the office of Mr. Flanders, I presume.

Q. Who gave them to him?

A. Mr. Alexander, I presume.

Q. Are they in your charge?

A. No sir, I never keep them in my charge.

Q. Who has charge of them?

A. They pass immediately to the accounting department.

Q. Is Mr. Alexander at the head of the accounting department?

A. Mr. Alexander is at the head of the accounting department, but some time in their course they go to the order clerks.

Q. I want to know who is in general charge of them.

MR. FLANDERS: If you want to go all over this thing again you may do it.

501 Mr. KELLOGG: Mr. Alexander said he is not in charge.

Mr. FLANDERS: I have already told you, for the purposes of this case that you might assume these contracts were here, and we decline to produce them. Now that is as square as you can get it on the record.

Papers produced by Mr. Kellogg marked Petitioner's Exhibits 104 to 109, inclusive, respectively.

The witness said the following to Mr. Kellogg: "Previous to my becoming manager of sales of the General Paper Company I told him I was connected with the Kimberly Company."

Q. I show you Petitioner's Exhibits 104 to 109 inclusive. Were those contracts made by the General Paper Company?

A. It appears so.

Q. I notice that the contract dated May, 1902, was signed by E. B. Menden (showing same to the witness).

A. Yes sir.

Q. Did he sign and deliver that contract in Duluth when he was there?

A. I haven't the slightest idea when he delivered it; I was not present.

Q. Well, he signed it?

A. It shows for itself.

Q. He had authority to sign it, didn't he?

A. Unless revoked by me.

Q. You don't remember of revoking his authority?

A. No sir.

Q. In other words, when he was in Duluth, he had authority to sign and deliver that contract, did he?

A. He had authority, yes sir.

Q. Did he?

A. Under certain stipulations he had authority to make a contract when he was in Duluth.

Q. Well, did he sign and deliver that contract?

A. Presumably he did.

502 Q. Did he have authority to sign it and deliver it?

Mr. FLANDERS: You needn't presume anything at all.

A. I don't know whether he signed it in Duluth or elsewhere.

Mr. FLANDERS: I move to strike his answer out on the ground of presumption.

Q. Did he have authority to sign it and deliver it in that form?

Mr. FLANDERS: That is objected to as asked and answered. The same objection.

A. Why, no sir.

Q. He had no authority to sign and deliver it?

A. Not in that form.

Q. Why?

A. Because I can never tell what a man will do in making a contract; I have to allow the salesman certain leeway.

Mr. FLANDERS: Is that different from the others?

Mr. KELLOGG: They are all the same.

Q. Exhibits 105 and 106 were also signed by Mr. Mendson, were they not?

A. Yes sir, apparently.

Q. Do you know whether they were delivered the day they were executed?

A. I don't know.

Q. You don't know?

A. I don't know.

Q. It was customary for him to do it, wasn't it?

Objected to as irrelevant and immaterial.

Q. Was it not customary for these salesmen to sign and deliver the contracts on the date that they signed them?

A. Why, quite the contrary.

Mr. KELLOGG: I offer these contracts in evidence, Petitioner's Exhibits 104 to 109 inclusive.

563 Mr. FLANDERS: They are objected to as irrelevant, incompetent and immaterial.

Q. Mr. A. C. Allen, I notice, signed Exhibit 109. Is that his signature?

A. Yes sir.

Q. And John A. Davis, Exhibit 107; is that his signature?

A. Yes sir.

Q. Do you know whether each of these contracts were signed and delivered in Duluth, when made by the several salesmen who signed them?

A. No sir.

Q. You don't know?

A. I do not. It may have been the day after, or on the train or in Chicago or anywhere, or the men may have left the signed document.

Q. Where is Mr. Mendson now?

A. He is in Chicago.

Q. Where is Mr. A. C. Allen?

A. Either in Chicago or on the road.

Mr. KELLOGG: May copies of these contracts be substituted in lieu of the originals with right to produce the originals at any time on any hearing?

Mr. FLANDERS: Surely. I suppose, however, those contracts will have to be copied, that is, a copy made of each.

Mr. KELLOGG: Yes.

Other papers are marked Petitioner's Exhibits 110 to 113 inclusive.

Q. I show you Petitioner's Exhibits 110 to 113 inclusive (handing same to witness).

A. Yes sir.

Q. Were those contracts made by the General Paper Company?

A. Yes sir.

Q. Were they signed by the salesman whose name is attached to each for the General Paper Company?

A. I recognize the signature.

Mr. KELLOGG: I offer these contracts in evidence. They are the same as the others.

Mr. FLANDERS: They are objected to as irrelevant and immaterial.

Mr. KELLOGG: I offer them in evidence subject to the same stipulations as to using copies.

Other papers marked Petitioner's Exhibits 114 to 117 inclusive.

Mr. KELLOGG: I offer in evidence Exhibits 114 to 117 inclusive, and with the permission of counsel it is stipulated that the samples of paper attached, the printing thereon, need not be copied in the record.

Mr. FLANDERS: Certainly not. They are objected to as irrelevant and immaterial.

Mr. KELLOGG: Just a memorandum made that a sample of print paper is attached.

Q. I notice Petitioner's Exhibit 116 is signed by W. Z. Stuart; is that your signature?

A. Yes sir.

Q. Petitioner's Exhibit 115 is signed by E. B. Mendsen; is that correct?

A. Yes sir.

Q. Petitioner's Exhibit 114 by A. C. Allen?

A. Yes sir.

Q. And Exhibit 117 by Mr. Mendsen.

A. Yes sir.

Other papers are marked Petitioner's Exhibits 118 to 122 inclusive.

Q. I show you Petitioner's Exhibits 118 to 122. State who signed those for the General Paper Company.

A. Exhibit 118 was signed by E. B. Mendsen; Exhibit 119 was signed by E. B. Mendsen; Exhibit 120 was signed by John A. Davis; Exhibit 121 was signed by A. C. Allen; Exhibit 122 was signed by A. C. Allen.

Mr. KELLOGG: I offer these in evidence (Petitioner's Exhibits 118 to 122).

Mr. FLANDERS: Those are objected to as irrelevant, incompetent and immaterial. Same stipulation in regard to the use of copies.

Other papers marked Petitioner's Exhibits 123 to 126 inclusive.

Q. I show you Exhibits 123 and 124. Was that contract made by the General Paper Company and signed by Mr. A. C. Allen? I am referring now to Exhibit 124.

A. Made by the General Paper Company, signed by A. C. Allen.

Q. Is Exhibit 123 also signed by Mr. Allen?

A. Yes sir.

Q. Is that a part of the Exhibit 124? Does it refer to that, I mean?

A. I presume so. It is attached to it, and probably we have the copy (showing exhibit to Mr. Flanders). I would like to look at it again, Mr. Kellogg, when you get through with it.

Mr. KELLOGG: Yes sir

Q. Does Exhibit 123 have reference to the contract, Exhibit 124.

Mr. FLANDERS: If you know, Mr. Stuart.

Q. If you know.

A. I don't remember, sir.

Q. Well, the contract, I notice, is dated 28th September, 1904. The statement is also 28th of September, 1904. Now is there anything else that this statement referred to other than the sale of 566 print paper provided for in that contract?

Mr. FLANDERS: If you know.

A. I don't know.

Mr. KELLOGG: I offer Exhibits 123 and 124 in evidence.

Mr. FLANDERS: Are those the latter ones, Mr. Kellogg?

Mr. KELLOGG: Yes sir.

Mr. FLANDERS: They are objected to as irrelevant, incompetent and immaterial.

Q. Did Mr. Allen sign Petitioner's Exhibits 125 and 126?

A. He signed 126, and I think that is his signature also on Exhibit 125.

Q. Is that letter 123 in Mr. Allen's handwriting?

A. I think it is.

Q. Do you know whether he delivered those contracts on the day they bear date in Kansas City?

A. That I can't tell. Sometimes contracts are in negotiation three months before they are closed?

Q. Do you know whether he delivered those?

A. No, I don't know whether he delivered a single one.

Q. You don't know?

A. I mean as to the time he delivered them.

Mr. KELLOGG: I offer those contracts in evidence.

Mr. FLANDERS: Some of these you wanted to see, Mr. Stuart.

WITNESS: I presume I can see them some other time.

Mr. FLANDERS: If you want to look at them not is the time to look at anything you want to look at (handing witness papers, which are examined by the witness and handed back to Mr. Kellogg).

Q. Any comments you want to make?

A. No.

Q. Then you don't know whether those were delivered by Mr. Allen the day they bear date or not?

A. I do not know that they were delivered the day they
567 bear date.

Q. Do you know whether he delivered them in Kansas City to the Drivers' Telegram Company at the time he signed them for the General Paper Company?

A. I do not, because he may have signed them in our office, I don't know.

Q. You don't know?

A. I don't know.

Other papers marked Petitioner's Exhibits 127 to 132 inclusive.

Q. I show you Exhibits 127 to 132 inclusive. Was Exhibit No. 127 signed by Mr. A. C. Allen, on behalf of the General Paper Company?

A. Yes, sir.

— Petitioner's Exhibit 128 signed by Mr. A. C. Allen on behalf of the same company?

A. Yes sir.

Q. Was Petitioner's Exhibit 129 signed by you?

A. Yes sir.

Q. Exhibit 130 signed by Mr. Allen on behalf of the General Paper Company?

A. Yes sir.

Q. Exhibit 132 signed by you on behalf of the General Paper Company.

A. Yes sir.

Q. Do you know whether Exhibit 128 was signed by Mr. Allen and delivered in Omaha to the Omaha Daily News, on or about the date it bears date?

A. On or about?

Q. Yes.

A. I presume it was.

Mr. FLANDERS: Now, Mr. Stuart, I don't care what you presume at all. I don't want you to presume anything here. All the presumption will be on the one side of the table or the other.

A. I must answer all of them, no, for I can't tell.

Q. It was customary for him to sign contracts and deliver them, was it?

568 Objected to as irrelevant, incompetent and immaterial.

A. Whenever he concluded a contract he was at liberty to deliver it if he wanted to. I want to modify that a little bit; at least, by conference with me.

Q. If he conferred with you he was authorized to deliver the contract at once?

A. Yes sir.

Q. You had authority to sign and deliver these contracts?

A. Yes sir.

Q. Without consulting anybody but yourself?

A. No sir.

Q. Now you say it was customary for Mr. Allen, when he was away from home and signed a contract, to deliver it at the time he signed it.

Mr. FLANDERS: That is objected to as stating something the witness has not testified to.

Q. Did you say that?

A. No sir.

Q. Isn't that true?

A. No sir.

Q. Do you know whether Petitioner's Exhibit 127 was signed by Mr. Allen and delivered by him in Omaha to the Omaha Daily News about the day it bears date? (Handing witness Petitioner's Exhibit 127.)

A. I don't know.

Q. Do you know whether Petitioner's Exhibit 121 was signed and delivered in Omaha by him at the time he signed it (showing witness Petitioner's Exhibit 121)?

A. I don't know.

Q. Where was Petitioner's Exhibit 132 made (showing same to witness)?

Mr. FLANDERS: Is that one signed by Mr. Stuart?

Mr. KELLOGG: Yes.

A. I don't know sir.

Q. Was that made in St. Paul?

A. No sir.

569 Q. Was it made in Chicago?

A. It might be.

Q. Was it signed and delivered by you?

A. I don't know, sir.

Q. It is your signature, isn't it?

A. Yes sir.

Q. Did you sign Petitioner's Exhibit 129 (showing same to witness)?

A. I did, sir.

Q. Was that done in your office in Chicago.

A. Possibly.

Q. Have you any recollection about it?

A. I will say that it was done in our office.

Q. Did you sign and deliver it to the gentleman?

A. I don't know, sir.

Q. About the day its bears date?

A. I don't know.

Mr. KELLOGG: I offer in evidence Petitioner's Exhibits 127 to 132 inclusive.

Mr. FLANDERS: They are objected to as irrelevant, incompetent and immaterial.

Other papers marked Petitioner's Exhibits 133 to 136 inclusive.

Q. I show you contracts Petitioner's Exhibits 133 to 136 inclusive. Who was Exhibit 133 signed by, on behalf of the General Paper Company?

A. C. A. Babcock.

Q. What officer was he of that company?

A. At one time an appointive manager, during the sickness of Mr. Frenek.

Q. Petitioner's Exhibit 134 was signed by whom?

A. Exhibit 134 was signed by E. B. Mendsen.

Q. Petitioner's Exhibits 135 and 136 (showing same to the witness).

A. Exhibit 135 was signed by E. B. Mendsen, and Exhibit 136 was signed by E. B. Mendsen. You will notice the style of those contracts are not all the same.

Q. Yes sir, I notice it. Now do you know whether these contracts were delivered by the various agents of the General Paper Company who negotiated them in St. Paul, at the time they were signed by the agents?

A. I don't know.

Q. Have you any recollection of this St. Paul Dispatch contract?

A. Yes sir.

Q. Take Petitioner's Exhibit 134; (showing same to witness) have you any recollection of that?

A. No sir; I know the date it was handed over.

Q. Do you know whether Mr. Mendsen signed that contract and delivered it to the St. Paul Dispatch Printing Company in St. Paul, the day he signed it?

A. That is 1902?

Q. Yes.

A. I don't remember; I don't know.

Q. Neither do you know as to the others, whether they were done likewise.

A. I think I know something about this Exhibit 136.

Q. What do you know about that having been delivered the day it was signed?

A. I think that it was delivered the date it was signed, because it didn't come to my approval in any way before such signature. I think it was delivered, therefore.

Q. It was carried out, wasn't it?

A. Oh yes; Mr. Davis was in control of the print department from September 15, 1903 to the present time.

Mr. KELLOGG: I offer these contracts in evidence, Petitioner's Exhibits 133 to 136 inclusive.

Mr. FLANDERS: Those are objected to as irrelevant, incompetent and immaterial.

Q. Now Mr. Stuart, was the business of the General Paper Company with the various publishers with which you dealt done substantially in the same way and by contracts like this?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

571 A. Substantially.

Q. You also sold some print paper to the jobbers, did you not?

A. Yes sir.

Q. How do the little country papers—not the large city papers—those papers, weeklies and country papers, how do they get their paper?

A. Why, sometimes from us; sometimes from our wholesalers.

Q. Your wholesalers sell the country papers a great deal?

A. For the most part.

Mr. FLANDERS: When you say “wholesalers” do you mean jobbers, yes.

Mr. FLANDERS: Same thing.

Q. And you sell to jobbers in Chicago, St. Louis, St. Paul and Minneapolis, do you?

A. All the cities.

Q. And you sell also to retailers?

A. No, I think not.

Q. You don't make contracts in advance for furnishing to the jobbers, do you?

A. I don't know that I can answer that yes or no. I should say no.

Q. Generally speaking you sell to jobbers without making contracts in advance?

A. Yes sir. You mean to the jobbers themselves.

Q. To the jobbers themselves.

A. Yes sir.

Q. With whom do you usually make contracts other than publishers, Mr. Stuart?

A. Why, with any large jobber in the country.

Q. That desires to make a contract?

A. Yes.

Q. Well, take the large jobbers, do they generally have contracts in advance or do they buy from you from time to time as they want it?

572 A. They buy from whoever will give them the paper cheapest. They buy from us sometimes, and sometimes from somebody else.

Last question read.

A. They do both ways.

Q. Bridner, Smith & Co. have a contract with you?

A. They have several contracts with us.

Q. Running over any length of time?

A. Yes.

Q. What contracts have they with you now?

A. Oh, I don't know; they supply a number of small papers, and they come to us to get them supplied. We make them a price, and if we can agree on it they leave the order with us. Another time they come—

Q. And with the Graham Paper Company, too?

A. The same.

Q. Wright, Barrett & Stilwell, of St. Paul?

A. Yes sir.

Q. They also buy part of their paper without contracts in advance?

A. Yes sir.

Q. Well, you sell paper to jobbers, retailers and others from day to day as they want it, do you not?

A. We don't sell to retainers.

Q. Well, to jobbers?

A. I don't know whether we understand each other on the terms. We don't sell to the small trade, if you please. We sell to the large jobber who may in turn be a retailer, as far as that goes.

Q. But the small retail trade you don't sell to?

A. No sir.

Q. Now throughout this whole country between Chicago and the Rocky mountains, you sell to jobbers who want to buy this paper from day to day as they want it, do you?

A. I tell you, we do both.

Q. Well, that is what I mean, both by contracts and by—

573 A. And by single sale, yes sir.

Q. And you ship the paper to them?

A. Yes sir.

Q. Do you usually deliver it to them in the town where they have their business place?

A. It depends upon the sale, whether it was made for some other place or whether it was made for their town.

Q. Well, state whether it is usually done that way?

Objected to as irrelevant, incompetent and immaterial.

Q. Is it usually done that way?

A. What way?

Q. Delivering it to the purchaser at the town or city where his business place is?

A. If he so orders it, yes.

Q. Well, I ask you what is the usual custom?

A. I say it is the usual custom if he wants it at St. Louis for us to ship it at St. Louis.

Q. Whether you deliver it to him on board the cars at the mill.

A. Oh. We make delivery price at the point he desired.

Q. Well, do you usually deliver that paper on board the cars at the mills where it is manufactured?

A. No sir.

Q. It is delivered at the town where the purchaser resides?

Mr. FLANDERS: Well, that is not what he said.

Q. Well, it is either delivered on board the cars at the mill or it is delivered in the town where the jobber is, isn't it?

Mr. FLANDERS: Well, he has not said that, either. He said quite the contrary. That it is delivered wherever the buyer wants it delivered. That might not necessarily be in the jobber's town.

Q. It is not usually sold delivered on board the cars in the town where it is manufactured?

A. No sir.

574 Q. You ship it to the town where it is ordered?

A. Yes sir.

Q. And either deliver it at the place where the jobber's business is or where he orders it delivered?

A. Yes sir.

Q. So that you ship the product of these mills into all the cities between here and the Rocky mountains.

A. Yes sir.

Mr. KELLOGG: Do you make any question about that being interstate commerce? If you do, I will go on and prove all the details.

Mr. FLANDERS: You needn't pursue that inquiry any farther at present. I will communicate with you later.

Q. Now you have traveling salesmen who visit these jobbers, have you?

A. Yes sir.

Q. And they sell bills of goods from day to day?

A. Yes sir.

Q. Naming the price to the jobbers?

A. Generally. Why of course.

Q. And agreeing with him then and there on the price?

A. Not always. Sometimes it is left open for negotiation.

Q. Yes, and sometimes it is closed.

A. Yes.

Q. And the goods are shipped on those orders?

A. Yes sir.

Q. That is the general custom of doing the business, is it?

A. Yes sir.

Q. Now, Mr. Stuart, what has been the yearly sales of the General Paper Company for these mills for which you are the exclusive selling agents under these contracts?

Objected to as irrelevant, incompetent and immaterial.

Mr. FLANDERS: And I advise the witness he need not answer.

A. On the advice of counsel I decline to answer.

Q. Do your books of account show the amount of yearly sales by the General Paper Company as the selling agent of these defendant companies.

Mr. FLANDERS: I make the same objection, and I give the witness the same advice.

A. On the advice of counsel I decline to answer.

Q. Do you keep books of account at your office in Chicago which show the amount of paper in weight and in dollars and cents, sold for each mill in each year?

Mr. FLANDERS: I make the same objection and I give the witness the same advice. And I inform the counsel that we keep regular books of account in the offices in Chicago.

Mr. KELLOGG: Do they show what I ask, Mr. Flanders?

Mr. FLANDERS: Well, that is as far as I am ready to go.

Q. Do you decline to answer, Mr. Stuart?

A. On the advice of my counsel, I do.

Q. Do you know, without refering to those books, about the yearly sales for all these defendant mills?

Mr. FLANDERS: I make the same objection and I give the witness the same advice.

A. I decline to answer on the same ground.

Q. What amount of paper do you sell for each, or did you sell, for each of these defendant mills in the year 1900?

Mr. FLANDERS: Same objection and same advice.

A. I decline to answer, on the advice of my counsel.

Q. What were the gross sales for all the mills for which your company is the exclusive agent under the contract in evidence, for the year 1900?

Mr. FLANDERS: Same objection and same advice.

A. On advice of my counsel I decline to answer.

Q. What was the amount of sales in dollars and cents made for each mill for which the General Paper Company was the exclusive selling agent, in the years 1901, 1902, 1903 and 1904?

Mr. FLANDERS: Same objection and same advice.

A. I decline to answer, on advice of counsel.

Q. Do you know what the amount is?

Mr. FLANDERS: I make the same objection and I give the same advice. It doesn't make any difference what you know.

A. On the advice of counsel I decline to answer.

Q. What was the gross amount of sales in dollars for all the companies during each year which I have referred to?

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. On the advice of my counsel I decline to answer the question.

Q. Do you know what amount of dividends have been paid by the General Paper Company each year?

Mr. FLANDERS: I make the same objection and I give the witness the same advice.

A. On the advice of my counsel I decline to answer.

Q. Will you state the amount of dividends paid by the General Paper Company each year?

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. On advice of counsel I decline to answer.

Q. Do your books show the gross receipts from commissions for the sale of paper?

Mr. FLANDERS: I make the same objection and I give the witness the same advice.

577 A. On the advice of counsel I decline to answer.

Q. Do you know the gross amount of commissions received each year for the sale of paper under the contracts in evidence?

Mr. FLANDERS: I make the same objection and also the objection that it has been asked once or twice before, but I renew my objection to it and give the witness the same advice.

A. On advice of counsel I decline to answer it.

Q. Do you keep books showing the total gross receipts from commissions from each one of these defendant companies for the sale of paper, the expenses of the business and the net profits?

Mr. FLANDERS: I make the same objection and I give the witness the same advice.

A. On advice of counsel I decline to answer.

Q. Do you know that of your own knowledge?

Mr. FLANDERS: Same objection, same advice.

A. On the advice of my counsel I decline to answer.

Q. Do you keep books of account showing the price of paper received by each of the defendant companies and sold by your company?

Mr. FLANDERS: Same objection and same advice.

A. On the advice of my counsel I decline to answer it.

Mr. KELLOGG: Well, I desire to suspend the examination and apply to the court to compel this witness to answer these questions. We will see whether he will answer them or not. I reserve the right to call him again.

Mr. FLANDERS: I don't know of any law that the United States has passed that can give us the power to make us *the power* 578 to make us go on with the examination if you don't want to.

Mr. KELLOGG: That is all for the present, Mr. Stuart.

WITNESS: Am I excused?

Mr. FLANDERS: If you are going to examine Mr. Stuart we insist that you must exhaust him.

Mr. KELLOGG: We shall not do so now.

Mr. FLANDERS: You decline to do it?

Mr. KELLOGG: We decline to do it now, yes sir.

Mr. FLANDERS: All right, Mr. Stuart, you may step aside.

The witness withdraws.

Subscribed and sworn to before me at the city of Milwaukee, Wisconsin, this — day of —, —.

Special Examiner.

579

James G. Flanders, Volume 7.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of Adam Brown.

6th Day, May 24, 1905.

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ROBERT S. TAYLOR,
Special Examiner,

580 ADAM BROWN, being duly sworn by the examiner as a witness on behalf of the petitioner, testified as follows :

Direct examination.

By Mr. KELLOGG :

Q. Where do you reside, Mr. Brown ?

A. At Menasha, Wisconsin.

Q. What is your business ?

A. Paper maker.

Q. What company have you been connected with ?

A. The C. W. Howard Company.

Q. What company are you connected with now ?

A. The Island Paper Company.

Q. How long were you with the C. W. Howard Company ?

A. About five and a half years.

Q. When did you leave that company ?

A. In 1903.

Q. In what capacity were you with the C. W. Howard Company ?

A. I was vice-president of the company and manager of the mill.

Q. What kinds of paper did your mill make ?

A. Made fibre papers ?

Q. Newspaper ?

A. No sir.

Q. Fibre papers.

A. Fibre papers.

Q. Did you make butcher's fibre ?

A. Yes sir.

Q. Was your company one of the companies that made a contract with the General Paper Company making it its exclusive selling agent ?

A. Yes sir.

Q. Do you remember whether you signed the contract or not ?

A. Why, Mr. Howard signed the contract, I think ; I am not positive which, whether it was Mr. Howard or Mr. Hawks, the secretary.

Q. What was your business in connection with the mill as
581 general manager ? Did you have charge of its manufacture ?

A. Yes sir.

Q. Were you a director in the company also ?

A. Yes sir.

Q. Who were the other directors ?

— C. W. Howard and F. W. Hawks.

Q. During the time that the General Paper Company was the exclusive agent of the C. W. Howard Company, with these other companies, do you know whether there was a pool between the companies on butcher's fibre ?

Mr. FLANDERS : Objected to as irrelevant, incompetent, imma-

terial, grossly leading, calling for the opinion of the witness on a subject in relation to which he is incompetent to testify.

A. There was.

Q. Please state what it was.

Same objection by defendants.

A. Well, there was an arrangement where if some mills made more than their proportion of the butcher's fibre——

Mr. FLANDERS: Mr. Brown, it is at least desirable that I should hear you. This room is not easy to hear in, and I would respectfully request you to speak up.

WITNESS: There was an arrangement that if one or more mills made more than their proportion of the butcher's fibre, that they would be recompensed for making it?

Q. By whom?

A. By the other mills that did not make their proportion.

Q. Was this arrangement between the mills in this combination?

Mr. FLANDERS: Objected to as irrelevant, incompetent, immaterial and grossly leading.

A. What was the question?

Q. Between what mills was this arrangement made?

582 A. The fibre mills.

Q. And the General Paper Company, do you mean?

A. Yes sir.

The defendants interposed the same objection.

Mr. FLANDERS: You do not claim that this man is a hostile witness, I take it?

Mr. KELLOGG: No sir.

Mr. FLANDERS: Take that admission down. Now then, I renew my objection to leading questions put by the counsel.

Mr. KELLOGG: I say the witness has shown no disposition to be hostile at present.

Mr. FLANDERS: That is not what you said.

Q. Do you know whether any of these mills had contracts with the General Paper Company or not?

Objected to by defendants as irrelevant, incompetent, immaterial and leading.

A. Yes, I know they had contracts with the General Paper Company.

Q. Now, with reference to those contracts, state what mills were in this arrangement.

Mr. FLANDERS: Same objection, and I suggest that the witness confine his testimony to what he knows himself.

A. The C. W. Howard Company; the Falls Manufacturing Com-

pany; the Dells Paper and Pulp Company; the Wausau Paper Mills Company; the Kimberly and Clark Company. That is all that I recall.

Q. Do you know whether, generally, it was the mills that were in this arrangement with the General Paper Company?

Objected to as irrelevant, incompetent, immaterial and grossly leading.

583 A. They were.

Q. Did your company make butchers' fibre?

Same objection by defendants.

A. They made very little.

Q. Were you at any time compensated?

Same objection by defendants.

A. No sir.

Q. State what occurred, so far as your mill is concerned, in relation to receiving or paying any moneys in this butchers' fibre pool.

Same objection by defendants.

A. We paid.

Q. To whom?

Same objection by defendants.

A. The checks were sent to E. A. Edmonds of the Falls Manufacturing Company.

Q. What for?

Same objection by defendants.

A. Well, he was the clearing house, as we called it to distribute the money to those that received pay; that is, the money that he received from those that paid he distributed among those that received pay.

Mr. FLANDERS: Same objection, and I move to strike the answer out for the same reasons.

Q. On what basis was this done, and who made the basis?

584 Mr. FLANDERS: Same objection; also as double, and calling for the opinion of the witness on a subject on which he is not competent to testify.

A. I don't understand that question.

Q. What was the basis on which this division was made? Do you know?

Same objection by defendants.

A. Why, I can't explain—I don't remember just the figures that the basis was made upon. Is that what you mean?

Q. Yes. Not just the figures, but how it was done.

Same objection.

A. Why, they came to an agreement as to what the basis was, and the General Paper Company instructed us how much we were to pay when we paid.

Mr. FLANDERS: Now just one moment. I move to strike that out for all the reasons stated, and as not responsive to the question.

Q. You say the General Paper Company instructed you; how did they do it?

A. They sent a statement—

Mr. FLANDERS: Now I object to that.

Q. Have you seen those statements?

A. Yes sir.

Mr. FLANDERS: Wait one moment. I object to that. Will you be good enough to instruct your witness, Mr. Kellogg, to wait his answer until I make my objections, or else say you won't do it; and I say again I will be suited with either position that you take.

The last questions and answers were read.

585 Mr. FLANDERS: I object to any evidence of the contents of the statement on the ground that the statement is the best evidence of its contents; and also for all the other reasons, and I move to strike out the answer of the witness as far as given.

Mr. KELLOGG: Now you need not answer until Mr. Flanders gets his objection in.

Q. Have you seen any of those statements sent by the General Paper Company to the C. W. Howard Manufacturing Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Yes sir.

Q. Do you know the contents of them?

Same objection by defendants.

A. I have seen the contents.

Q. Are they now in your possession?

Same objection.

A. No sir.

Q. Whose possession are they in?

Same objection.

A. They should be in the possession of the C. W. Howard Company, if they have preserved their papers.

Q. You are not connected with that company now?

A. No sir.

Q. You have no access to their books or papers ?

A. No sir.

Q. Can you give us the substance of one of those statements ?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, and for the further reason that the statements are
586 the best evidence ; the C. W. Howard Paper Company is a corporation organized under the laws of the State of Wisconsin, located in Wisconsin, and in the eastern district of Wisconsin, and subject to the subpoena of the United States Government if issued by its counsel, and the statements are the best evidence of their contents.

A. The statements showed how much each mill that was to pay should pay into the pool and how much each mill that was entitled to compensation received.

Mr. FLANDERS: I move to strike that answer out for all the reasons hereinbefore stated.

Q. How often were these statements made ?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. Quarterly.

Q. Quarter yearly ?

A. Yes sir.

Q. State whether that was during all the time you were with them.

Mr. FLANDERS: That is objected to for all the reasons stated, and leading.

A. No, it was not all the time.

Q. I mean after the organization of the General Paper Company. Same objection.

A. No sir, that was an arrangement made some little time after the General Paper Company was organized.

587 Mr. FLANDERS: Mr. Brown, do you decline to follow the request of your counsel and wait for me to put in my objection ?

Mr. KELLOGG: Oh, state your objection.

WITNESS: I didn't intend to do anything intentionally.

Mr. FLANDERS: Very well, then, wait until my objections come in.

Mr. KELLOGG: I am willing to stipulate that each and every question may be considered objected to on every ground that you can think of, and that you may avail yourself of that objection.

Mr. FLANDERS: Well, I am very much obliged to you, but I think I prefer to state my objection.

Mr. KELLOGG: All right.

Last question and answer read.

Mr. FLANDERS: I move to strike that answer out for all the reasons stated.

Q. Do you know whether all the mills which from time to time made the General Paper Company exclusive selling agent were in this pool or not?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, and grossly leading.

A. I think it was only the fibre mills.

Q. Only the fibre mills?

A. Yes sir.

Q. Why was it not desirable to make butchers' fibre?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. On account of the difference in the selling price between 588 No. 1 fibre and butcher's fibre.

Q. What do you mean by that—whether it was less profitable or not?

A. Less profitable, yes sir.

Q. It was less profitable?

A. Yes sir.

Q. Then was butcher's fibre a desirable paper to make?

Mr. FLANDERS: Objected to for the same reasons and as leading.

A. No sir.

Q. Who was Mr. Edmonds, who was the pool agent?

Mr. FLANDERS: That is objected to for all the reasons and as assuming a fact not shown in the case.

A. He was the manager of the Falls Manufacturing Company.

Q. Do you know any of the companies which made butcher's fibre and received compensation?

Mr. FLANDERS: Same objection and as leading.

A. The Wausau Paper Mills Company received compensation and the Dells Paper and Pulp Company. I can't just recall any others.

Q. You don't remember?

A. No; those are the only ones I am sure about.

Q. Do you know how many mills participated in these payments?

Mr. FLANDERS: Same objection and as leading.

A. That I couldn't say, no sir, as to just how many.

Q. You know that your company did.

A. Yes sir.

Q. State whether that pool was in existence when you left the C. W. Howard Manufacturing Company.

Objected to as irrelevant, incompetent, immaterial and leading.

A. Yes sir.

589 Q. When did you leave that company?

A. In January, 1903.

Q. Are you familiar with the print, fibre and manila trade in the West?

A. Yes sir.

Q. Do you know the leading manufacturers?

A. Yes sir.

Q. I show you a list of the defendant companies. Will you look at it, please. The companies are in the left hand column.

The paper shown witness was marked for identification Petitioner's Exhibit 137.

Q. Assuming those companies have all made contracts with the General Paper Company making it its exclusive selling agent, state whether or not they are the principal manufacturers of print, news print, manila and fibre papers west of Chicago and east of the Rocky mountains.

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, leading and suggestive, and calling for the opinion of the witness upon a subject in relation to which he is not competent to testify.

A. They are.

Q. Do they or not comprise substantially all of them?

A. Substantially all of them.

Cross-examination.

By Mr. FLANDERS:

Q. Mr. Brown, how old a man are you?

A. Forty-nine years old.

Q. And where did you originate?

A. In Neenah, Wisconsin.

Q. Born there?

A. Yes sir.

Q. What different kinds of business have you followed? What was the first thing you went into as a boy, a young man, or whatever you did?

590 A. I worked in a stove factory.

Q. At what age?

A. About seventeen years.

Q. You began there?

A. Yes sir.

Q. I suppose you had an ordinarily good education, common school education, before that?

A. Yes sir.

Q. How long did you work in the stove factory?

A. About thirteen years.

Q. At Neenah, Wisconsin?

A. Yes sir.

Q. Then what did you do?

A. I worked traveling on the road.

Q. For whom and in what business?

A. Selling caskets.

Q. For whom?

A. For a concern in Chicago.

Q. What was the name of it?

A. The Eureka Casket Company—or Indestructible Casket Company, I should have said.

Q. Yes, that is a good name for a casket company. How long did you sell goods for the Indestructible Casket Company?

A. About one year.

Q. Is that company in existence now?

A. I don't think it is.

Q. Who was connected with it?

A. I don't remember the names of the gentlemen now.

Q. What?

A. I don't remember their names.

Q. Why did you hesitate when I asked you what the name of the company was?

Mr. KELLOGG: I wish to state the witness did not hesitate.

Mr. FLANDERS: Let him state that if he wants to.

WITNESS: Well, the name slipped my mind for a moment.

Q. Oh.

A. It is some time ago.

Q. You can't remember the name of any man that was influential in that company, can you?

A. No sir.

591 Q. How long has it been out of existence, if it is out of existence?

A. It went out of existence when I quit working for them.

Q. Were you one of the proprietors?

A. No sir.

Q. And you worked for them a year?

A. Yes sir.

Q. Did it fail?

A. They failed.

Q. And you haven't the slightest recollection who the principal man there was, whether his name was Smith or Jones or Brown?

A. Don't remember their names.

Q. Well then, what did you after you ceased working for the Indestructible Casket Company?

A. I went to work in a gambling house.

Q. In a gambling house?

A. Yes sir.

Q. Perhaps you can remember the name of the proprietor of the gambling house, can you?

A. Yes sir, I do.

Q. Well, what was his name?

A. His name was Gilligan.

Q. And where did he keep his indestructible gambling house?

A. Here in Milwaukee.

Q. The same Gilligan who lives here now?

A. I don't know; I haven't been here in seventeen years, so I don't know. I don't know whether he is dead or alive.

Q. You were seventeen years old when you began to work for the stove company and you worked for them thirteen years and one year for the Indestructible Casket Company, so that you must have been about thirty-one years old when you went in the employment of the gambler, weren't you?

A. I will have to refresh my memory a little there.

Q. Well, seventeen and thirteen and one makes thirty-one, doesn't it?

A. Yes sir.

592 Q. Well, you went into Mr. Gilligan's gambling house; how long did you stay there?

A. I think about one year.

Q. What were your duties in the gambling house, or what did you do in the gambling house?

A. I was dealing cards.

Q. Dealing cards?

A. Yes sir.

Q. Any particular branch of the gambling business that you dealt cards in?

A. Well, I have dealt faro bank.

Q. What else?

A. Hazard.

Q. What else?

A. Ran what was called a piquette game.

Q. A piquette game.

A. Yes sir.

Q. What is a piquette game?

A. Well, it is a game that was invented——

Q. A game that was invented——

A. --to take the place of keno.

Q. What else did you do there?

A. That is all, sir.

Q. Where was that gambling house located in Milwaukee?

A. It was located on East Water street.

Q. Where on East Water street?

A. I don't remember the number.

Q. Well, after you left the gambling house what did you do?

A. I went to work for C. W. Howard.

Q. In what business?

A. In the paper business, running paper mill.

Q. And how long did you work for him or with him?

A. I went to work for him in 1888.

Q. How long did you work for him or with him?

A. Until he sold out in 1892.

Q. To whom?

A. Sold out to the—it was a concern,—the concern that bought him took the name of the Howard Paper Company.

Mr. KELLOGG: When was that?

593 Mr. OLDS: In 1892.

Q. Who were the men in the concern of the Howard Paper Company that bought him out?

A. Oh, there were ten or twelve stockholders.

Q. Do you remember them?

A. I remember some of them.

Q. Well, whom do you remember?

A. I remember W. K. Rideout, James Doty, Benjamin Doty.

Q. What year were you born in, Mr. Brown, if you remember?

A. I was born in 1855.

Q. And how long did you say you worked with the C. W. Howard Paper Company?

A. With the C. W. Howard?

Q. Didn't you say the C. W. Howard Paper Company?

A. Never worked for such a concern.

Q. What concern did you work for?

A. For the C. W. Howard Company.

Q. How long did you say you worked with them?

A. I worked—well, Mr. Howard himself started before the company was formed; started in 1897.

Q. You don't mean 1897, do you? or do you?

A. Yes sir, I mean 1897. Then the C. W. Howard Company was formed about a year and a half after he started.

Q. Well, now, I may have misunderstood you or you may have misspoken yourself, but I understood you to say that the C. W. Howard Company sold out to the Howard Paper Company in 1888.

A. No sir, I didn't say so.

Q. At any rate you meant 1898, did you?

A. No sir.

Q. What did you mean?

A. I will explain it to you, if you wish.

Q. All right, I will be greatly obliged to you if you will.

A. It is rather a mixed up affair if you are not thoroughly posted on the concern.

594 Q. No, I am not posted at all.

A. C. W. Howard started a paper mill in 1887, and ran the mill until 1892 and sold out to a concern that took the name of Howard Paper Company.

Q. Oh yes.

A. Then Mr. Howard again started in there in 1897 and again sold out the last—or this February.

Q. Well, now then, when was it that you began to work in the paper business with C. W. Howard?

A. In 1888.

Q. In 1888.

A. Yes sir.

Q. You went from the gambling house directly into that business.

A. Yes sir.

Q. And you worked there until 1892, did you?

A. Well, I worked with the new company for—

Q. Oh, with the new company.

A. —for a year, yes sir.

Q. For a year.

A. Yes sir.

Q. That would bring it down to 1893.

A. Yes sir.

Q. Then what did you do?

A. Then I didn't do anything until 1904—or 1894.

Q. 1894?

A. Yes sir.

Q. Where did you spend that time?

A. Spent it in Neenah and Menasha.

Q. Doing nothing?

A. Doing nothing, no sir.

Q. Well, what did you do in 1894?

A. I went to Chicago.

Q. What did you do there?

A. Sold paper.

Q. For whom?

A. For Kelly & Co.

Q. Who is Kelly & Co.?

A. They were paper dealers in Chicago.

Q. How long did you work for them?

A. Until August 1895.

Q. Then what did you do?

A. Went to Park Falls where C. W. Howard was building a mill.

595 Q. Whom did you work for there?

A. For C. W. Howard.

Q. For how long?

A. Oh, from August until the following March or April.

Q. Then what did you do?

A. Didn't do anything.

Q. How long did you follow that occupation?

A. Followed that until February 1897.

Q. Where did you spend your time when you were doing nothing?

A. In Neenah and Menasha.

Q. In 1897 what did you do?

A. In 1897?

Q. Yes.

A. Went with C. W. Howard when he started——

Q. How long did you work with him?

A. With C. W. Howard?

Q. Yes.

A. Until January 1903.

Q. What was the name of his company?

A. Well, when he started he started as an individual; there was no company, but they formed a company in 1899; I then worked for him until 1903.

Q. Then where did you go?

A. Didn't go any where.

Q. Well, you went to work somewhere, didn't you?

Q. You haven't been working since January 1903?

A. Well, I am at work now, but I didn't work from January 1903 until this last February.

Q. Then whom did you go to work for?

A. For the Island Paper Company.

Q. Who is connected with that?

A. Well, I don't know all the stockholders; I know some of them.

Q. Well, who are some of them?

A. John Strange, A. M. Strange, D. T. McKinnon.

Q. Now from 1903 to February 1905 you say you were doing nothing

A. Doing nothing, no sir.

Q. Where did you spend that time?

A. I spent it at Menasha.

596 Q. Since 1905 you have been connected with the Island Paper Company?

A. Yes sir.

Q. Have you now given all the different occupations that you followed?

A. As well as I can remember them.

Q. What?

A. As well as I can remember them.

Q. Well, have you any doubt about your being able to remember them?

No answer.

Q. Have you now given all the occupations and persons and firms for whom you worked since you began to work at all?

A. As well as I can remember them.

Q. Well, have you any doubt but what you remember them all?

A. It might be possible that I didn't remember them all.

Q. Well, now, what position did you hold—in the last company was the C. W. Howard Paper Company, was it?

A. No sir, the C. W. Howard Company.

Q. What position did you hold with that company?

A. I was vice president.

Q. Vice president. For how long a time?

A. From the time the company was organized until I left them.

Q. Well, it was organized when?

A. In 1899.

Q. And from then until 1903, January, you were vice president, you say?

A. Yes sir.

Q. Now what knowledge have you that any other mill than that mill made any contracts with the General Paper Company? You never saw the contracts, did you?

A. Yes sir.

Q. Of what mills?

A. I saw the contract with the C. W. Howard Company.

Q. Well, I know, but I said, What knowledge have you of the fact that any mill other than the C. W. Howard Company made a contract with the General Paper Company?

A. Oh, from the reports C. W. Howard made when he came to me from the meetings.

Q. What people told you?

A. What he told me. Not people.

Q. What he told you?

A. Yes sir.

Q. So as a matter of fact, you didn't have any knowledge about any contracts with any other mill except the C. W. Howard Paper Company, except what Howard told you.

A. That is all.

Q. That is all. Well now, would you be good enough to explain how you came to tell Mr. Kellogg, in answer to his question these several mills that had contracts with the General Paper Company when you didn't know anything about that except what you had been told? Why did you undertake to state as a fact that these other mills had contracts with the General Paper Company when you knew nothing about it except what Howard had told you?

A. I must have misunderstood the question or I wouldn't have said they had contracts unless I stated that Mr. Howard told me so.

Q. Well, you didn't intend to have anybody understand that you knew anything about it, did you, except in relation to the C. W. Howard Paper Company?

A. Only what Mr. Howard told when he came home from the meetings.

Q. Well, Mr. Howard is alive and able to testify for himself, I suppose. Now then you have undertaken to state that there was a pool here?

A. Yes sir.

Q. Well, now did you get your information about that from Mr. C. W. Howard?

A. Well, from the talk that others had in the office—

Q. No, no. Just one moment. That is a question you can answer yes or no. (To the examiner :) Read it to him, please.

598 Question was read.

A. No sir.

Q. Well, from whom did you get it?

A. I knew from the statements that came there that there must have been a pool.

Q. Well, I am not asking you about the statements. I ask you from whom. Now "who" means a man or a woman or a child of some kind. What living being did you get your information from, if any?

A. Well, I heard Mr. C. W. Howard and D. R. Davis talking about it in the office there.

Q. Are they the only ones that you know of that you got any information from?

A. Yes sir.

Q. So that all you know, aside from the statements, is what you heard Howard and D. R. Davis say. Is that right?

A. Yes sir.

Q. That is right is it? Take your time about it and answer deliberately.

A. I have answered it twice.

Q. That is the answer you want to stand by?

A. Yes sir.

Q. Now then; you haven't got any of these statements, have you?

A. No sir; I haven't any of the statements; I didn't take their books.

Q. Now then, the Island Paper Company that you are connected with now, are you—

A. Yes sir.

Q. —the Island Paper Company didn't make a contract with the General Paper Company, did it?

A. No sir.

Recess was here taken until two o'clock p. m., at which time the hearing was resumed and the witness was recalled.

Q. Mr. D. R. Davis is dead, isn't he?

A. Yes sir.

Q. The only living person that you ever heard say anything about it, therefore, is Mr. C. W. Howard, about this what you call butcher's fibre pool?

599

A. No sir.

Q. What?

A. No sir.

Q. Have you thought of somebody else since lunch?

A. No, I knew of somebody else before that.

Q. Didn't you say before lunch that the only living persons that

you ever heard say anything about it was Mr. C. W. Howard and D. R. Davis? Now answer that yes or no.

A. If I did, I didn't understand your question.

Q. Well, did you say so?

Mr. KELLOGG: No, he didn't say so.

Mr. FLANDERS: I didn't ask you. I am asking him.

A. Not that I know of.

Q. What?

A. Not that I remember of.

Q. You deny that, do you?

A. Yes sir. I didn't mean they were the only two living persons—

Q. I didn't ask you what you meant at all.

A. —if I said so.

Q. Now whom have you been talking with about this case and about your testimony in this case?

A. I have been talking with that gentleman there, Mr. Kellogg.

Q. Mr. Kellogg and Mr. Olds?

Mr. KELLOGG: He talked to me to day. That is the first time he ever talked to me, if you want to know that.

Q. With Mr. Kellogg and Mr. Olds.

A. Yes sir.

Q. Since the adjournment?

A. Yes sir.

Q. About your testimony in this case?

A. Yes sir—no, not about the testimony in the case.

Q. About what you had testified to?

A. Yes sir.

Q. And about what the facts were in the case?

A. Yes sir.

Q. And did you tell them what you thought the facts in the case were?

A. Yes sir.

599½ Q. And did you get any new facts from them in that conversation?

A. No sir.

Q. Well, where did you get this new fact that you heard somebody else talk about this besides Davis and C. W. Howard?

Mr. KELLOGG: Now I object to that, because it assumes he has got a new fact. He didn't testify this morning that he heard nobody else talk about this butcher's fibre pool.

Mr. FLANDERS: Just get your record and we will see what he says.

(Notes refer-ed to.)

Mr. FLANDERS: Now then, find where the witness begins to testify on cross-examination in relation to this alleged pool and we will see what he did say.

The examiner then read the following:

Q. Well, I am not asking you about the statements; I ask you from whom? Now "who" means a man or a woman or a child of some kind. What living being did you get your information from, if any?

A. Well, I heard Mr. C. W. Howard and D. R. Davis talking about it in the office there.

Q. Are they the only ones that you know of that you got any information from?

A. Yes sir.

Q. So that all you know aside from the statements is what you heard Howard and D. R. Davis say, is that right?

A. Yes sir.

Q. That is right is it? Take your time about it and answer deliberately.

A. I have answered it twice.

Q. That is the answer you want to stand by?

A. Yes sir.

Mr. FLANDERS: I will ask you now, Mr. Taylor, to take this question down: I call your attention now to the testimony given by you before the adjournment for lunch, taken down by Mr. Robert S. Taylor, special examiner, appointed by the Federal court in St. Paul to take testimony in this case.

Mr. KELLOGG: That is very impressive.

600 Mr. FLANDERS: Which he will now read to you, and I ask you to listen to it. Now read to him that part, which speaks of living being, beginning there, which you just read to me.

The examiner again read the portion above indicated.

Q. Now, having called your attention to the testimony you gave before the adjournment, I ask you whether you heard it read by Mr. Taylor?

A. Yes sir.

Q. And you remember it, don't you, as you heard it read?

A. Yes sir.

Q. And you heard him read the fact that you stated that the only living persons from whom you got any information on this subject were C. W. Howard and D. R. Davis, didn't you?

A. Yes sir.

Q. And you did make that answer before the adjournment, didn't you?

A. Yes sir, I must have.

Q. And did you, within five minutes, tell me you didn't make any such answer?

A. It wasn't my intention to say I didn't make that answer.

Q. I didn't ask you what your intention was. Did you within five minutes tell me that you made no such answer before the adjournment of the court?

A. I don't remember that I did.

Q. You have forgotten that, have you?

A. I can't remember I made such an answer.

Q. Can't you remember what you said within five minutes?

Mr. KELLOGG: I object to the tactics. The gentleman stated that aside from the statements. Your question excludes the information which he had about the statements, and it is not a fair question.

601 Mr. FLANDERS: You can read the question, and when it is printed out you will find I put no such question.

Q. Have you forgotten the testimony that you gave here within five minutes?

A. I don't remember of saying "Yes sir," to that.

Q. What?

A. I don't remember that.

Q. Don't remember what?

A. The question that you just asked as to whether I remembered whether you said that I said Yes, or not.

Q. Well, don't you remember that you told me here within five minutes and since we came in after lunch, that you didn't testify before the adjournment of the examiner that the only living beings you got any information from were C. W. Howard and D. R. Davis.

A. No sir, I don't remember.

Q. You don't remember.

A. No sir.

Q. You have forgotten. Now you remember you got some information from some other living being than Howard and Davis, don't you now?

A. Yes, sir, I do now.

Q. Where did you get that new fact?

A. Well, I—

Q. No, where did you get it?

A. It came to my mind.

Q. Where were you when it came to your mind?

A. Sitting in this chair.

Q. Oh, sitting in this chair.

A. Yes sir.

Q. And before the adjournment or afterwards?

A. Just a few minutes ago.

Q. Before the adjournment or afterwards?

A. After the adjournment.

Q. After the adjournment?

A. Yes sir.

Q. You hadn't thought of that before?

A. No sir.

602 Q. Well, now you say you have talked over this matter with your counsel since the adjournment?

A. Since the adjournment, yes sir.

Q. Well, I don't ask you what you said to them, but I ask you how long that conference lasted between you and them.

Mr. KELLOGG: You can ask him what he said if you want to.

Mr. FLANDERS: I don't want to.

A. Oh, probably five minutes.

Q. Five minutes?

A. Something like that. I didn't note the exact time, but about five minutes I should judge.

Q. You would say as a witness that you didn't exceed five minutes?

A. I don't think so.

Q. Didn't you go with them to their room and remain there until dinner-time?

A. I didn't go to dinner with them, or think of dinner time.

Q. I didn't ask you that.

A. No, I just went up there and staid about five minutes.

Q. About five minutes?

A. Yes sir.

Q. Now what new memory have you got as to what you ever heard about this subject that you got sitting in that chair since adjournment?

A. Well, I at the time didn't think that Mr. Hawks was there.

Q. Oh, Mr. Hawks was another living being there?

A. Yes sir.

Q. At that time?

A. He was a member of the C. W. Howard Company, and was there in the office at the time Mr. Davis was there. I didn't think of that.

Q. Well, now have you exhausted your memory on that subject? Is there any other living being that you heard anything about on that subject except C. W. Howard and Mr. Hawks and D. R. Davis?

603 A. I might have heard other members of the General Paper Company coming in there and talk about it and have forgotten it.

Q. Yes, the moon might have been made of green cheese, but I ask you if you did get any information from any other living being except the three you have named?

A. Not that I remember of, no.

Q. And one of them is now dead?

A. One of them is dead, yes sir.

Q. Now take your time about it again. As I understand you, you say that all you know about that alleged pool is what you heard Howard and Davis say in the presence of yourself and Hawks, and seeing the statement; is that right?

A. Howard and Davis and Hawks. That is all that I remember of just at present?

Q. Well, have you taken your time on that now so that you are right about that? If you haven't, take all the time you want.

A. I might think of something tomorrow that I didn't think of today.

Q. Yes, I know you might do that, but I am not asking you what you might do. I ask you to take all the time you want to take now and answer me whether you want to change the answers which you have already given on that subject.

A. I don't remember anything just now to change it.

Q. Well now then, you undertook to say that the mills named to you by Mr. Kellogg had no competitors, in substance, east of the Rocky mountains, didn't you?

A. No sir.

Q. Well, what did you say on that subject?

A. I have forgotten just the words there. They are probably there.

Q. Yes. Well, that these were all the principal paper companies engaged in that business east of the Rocky mountains and doing business west of Chicago; didn't you say that?

A. I said that those mills were the principal mills between Chicago and the Rocky mountains, yes sir.

Q. Yes, doing business in that territory.

A. Yes.

Q. Now did you ever hear of the Kimberly and Clark Company, of Neenah, Wisconsin?

A. Kimberly and Clark Company, yes sir.

Q. Well, isn't that a leading paper manufacturing company doing business in the territory between Chicago and the Rocky mountains.

A. They are on that list.

Q. Don't you know, as a matter of fact, that one or more of their mills made no contracts with the General Paper Company?

A. They may, but I don't know.

Q. You never heard that?

A. I know there is one mill that doesn't.

Q. You do know that.

A. One mill, yes sir.

Q. What did you say you didn't know it, then?

A. Because I didn't think quick enough.

Q. Oh, you didn't think quick, now. You think now that you do know that one of the mills of the Kimberly-Clark Company doesn't have any relations with the General Paper Company?

A. Yes.

Q. Isn't the Kimberly-Clark Company a tolerably strong competitor in any field?

A. Yes, they are.

Q. And this mill is, isn't it?

A. This mill?

Q. This mill that hasn't any contract relations with the General Paper Company.

A. That makes a different class of paper than the mills do that are represented on that list.

Q. What class of business are they engaged in?

605 A. They make a different grade of paper.

Q. What kind of paper?

A. They make good fibres.

Q. Who does?

A. This mill that I have reference to that belongs to Kimberly-Clark.

Q. Nothing but book paper?

A. To the best of my knowledge that is all they make, is book paper.

Q. You don't know that they make print paper?

A. Not that I know of, no sir.

Q. Now what kind of paper did these companies make that Mr. Kellogg read you the list of?

A. They make print, fibres, manilas.

Q. Hanging?

A. Hangings.

Q. Novel?

A. Novel. They make novel of a very cheap grade, supposed to be in the print class.

Q. I don't care whether it is cheap or high.

Mr. KELLOGG: Just let the witness answer. You cut him off. He has got a right to answer.

Mr. FLANDERS: I can't cut him off to save my soul.

Mr. KELLOGG: I don't think you can.

Mr. FLANDERS: No, I can't. But at the same time if he will answer my questions and get through we will get along faster.

Q. Now did you ever hear of the Outagamie Paper Company?

A. Yes sir.

Q. What business is that engaged in?

A. They make book papers, to the best of my knowledge.

Q. Don't you know that they make print paper?

A. I understood they were making book.

Q. Well, now, couldn't you answer my question.

Question read.

606 A. No, I do not.

Q. Never heard of that?

A. They used to make print a long time ago, but I understood they were making book now.

Q. I didn't ask you what you understood they were making. I ask you if you have no information that they are making print paper.

A. No sir, I have no information, none at all.

Q. You are vice president and director of the C. W. Howard Paper

Company and don't know what the Outagamie Paper Company was and is.

A. No sir.

Q. You are in the Island Paper Company now, aren't you?

A. Yes sir.

Q. What office do you hold there?

A. None at all.

Q. What position do you hold there?

A. Sort of a general adviser.

Q. General adviser?

A. Yes sir.

Q. Legal or medical or manufacturing?

A. As a paper maker.

Q. Did you ever hear about George A. Whiting?

A. Yes sir.

Q. Where is the Outagamie Paper Company located?

A. At Kaukauna.

Q. And where is the Island Paper Company located?

A. At Menasha.

Q. And about how far apart are those two places?

A. I think about fifteen miles. Something like that; I don't know exactly.

Q. Where do you live—Menasha?

A. Yes sir.

Q. Mr. George A. Whiting lives there, too, don't he?

A. No sir.

Q. Well, Neenah?

A. Yes sir.

Q. Well, they are practically the same place, aren't they? Divided by a river?

A. By a street.

Q. Well, you know all about Mr. Whiting, don't you?

A. No sir.

667 Q. Well, you know that he has a mill there, don't you?

A. Yes sir.

Q. That hasn't any relations with the General Paper Company.

A. Yes sir.

Q. Do you happen to know what kind of paper that makes?

A. Yes sir.

Q. What kind of paper does that make?

A. It is book papers.

Q. Not print?

A. No sir.

Q. Sure about that?

A. Quite sure.

Q. And how is it about the Patent Paper Company, what do they make?

A. To the best of my knowledge they make book.

Q. Don't they make print paper?

A. Not that I know of.

Q. You don't know about that.

A. I don't think they make print.

Q. Are you prepared to say they do not?

A. I am not positive, no sir. I say to the best of my knowledge they make book.

Q. I didn't ask you what they made. I asked you whether or not they make print paper. Now you needn't answer that question unless you want to, by telling me they eat oranges, because I didn't ask you that. I asked you whether or not they made print paper.

A. I don't know.

Q. Or if you are ready to say they did not.

A. I don't know.

Q. Oh, you don't know that? How is it about W. D. Boyce, did you ever hear of him?

A. W. D. Boyce?

Q. Yes, Marseilles, Illinois.

A. Yes sir.

Q. Do you know whether he makes print paper or not?

A. I do not.

Q. Don't know anything about that?

A. No sir.

Q. Do you know what kind of paper the Island Company makes?

A. Yes sir.

608 Q. Yes, you do know that. Did you ever hear about Winnebago Paper Mills, Neenah, Wisconsin?

A. Yes sir.

Q. How far is your mill from the Winnebago Paper Mills of Neenah, Wisconsin.

A. About one mile.

Q. Do you know whether they make print paper or not?

A. To the best of my knowledge they make book.

Q. You couldn't answer my question directly, could you, without putting in the best of your knowledge they make book. I asked you whether they made print paper.

Mr. KELLOGG: The witness has got a right to say whether it is the best of his knowledge or not or whether he will tell positively.

Mr. FLANDERS: That is all right. That is down.

Mr. KELLOGG: I don't think these bulldozing tactics are going to mix him up.

Q. You understand the question when I ask you whether this mill makes print paper, don't you?

A. I don't think they do.

Q. You don't understand that? What is there about it you didn't understand.

Mr. KELLOGG: He didn't say he didn't understand it.

WITNESS: I said I didn't think they made print.

- Q. Do you know anything about it?
- A. Oh, I know from talking with the people that worked there.
- Q. Or, how is it about the Alexandria Paper Company, at Alexandria, Illinois? Did you ever hear of that?
- A. No sir, I never heard of it.
- Q. Alexandria, Indiana. You never heard of that.
- A. Yes sir.
- Q. Well, do they make print paper?
- A. I don't know what they make.
- Q. How is it about the Cheboygan Paper Company of Cheboygan, Michigan; did you ever hear of that?
- 609 A. I have heard of them, yes sir.
- Q. Do they make print paper?
- A. I don't know what they make.
- Q. Now then take the Marinette and Menominee Paper Company, Marinette, Wisconsin and Menominee, Michigan, do you know anything about them?
- A. I have heard of them.
- Q. What kind of paper do they make?
- A. I understand they make manilas mostly.
- Q. Well, manila, does that include wrapping paper and fibre?
- A. Manilas, yes sir.
- Q. They do make wrapping paper and fibre, then?
- A. They don't make any fibre, I don't think.
- Q. Wrapping paper, then?
- A. They make manilas and print.
- Q. Manila is wrapping paper, isn't it?
- A. Yes.
- Q. You may indulge me by calling it wrapping paper for the time being, if that is true. Now is that Marinette and Menominee Paper Company in competition in the wrapping or manila paper business?
- A. I think they are.
- Q. You do think so.
- A. Yes sir.
- Q. You know they are, don't you?
- A. No, I am not positive, but I am quite sure they are.
- Q. What?
- A. I am quite sure they are.
- Q. Does the Island Milling Company make wrapping company, manila paper?
- A. Yes sir. No sir, they don't make manila, they make fibre papers.
- Q. You are a little too uncertain as to whether the Menominee and Marinette Paper Company is a competitor in this business or not, aren't you?
- A. I am uncertain about it, yes sir.
- Q. Uncertain?
- A. Yes sir.

610 Q. Is there anything in relation to any of these mills that you are certain about?

A. I am certain about some of them, yes sir.

Q. Do you happen to know what the John Strange Paper Company makes?

A. Yes sir.

Q. What does that make?

A. Well, they make poster and manilas.

Q. Fibre?

A. No they don't make any fibres at all.

Q. They don't make any fibres?

A. No sir.

Q. That is a competitor for this trade between Chicago and the Rocky mountains, isn't it?

A. Yes sir.

Q. And they have made fibre, haven't they?

A. They never made much fibre there; very little.

Q. Well, have they made fibre?

A. Yes they have made fibre.

Q. And sold it?

A. I don't know what they did with it; I don't know anything about that.

Q. You are uncertain on that subject. Do you happen to remember what the C. W. Howard Paper Company made?

A. They made fibres.

Q. You know that?

A. Yes sir.

Q. One mill you do know about. Now then how about the Fletcher Paper Company of Alpena, Michigan. Did you ever hear of that?

A. I have heard of that.

Q. Do you know what they make or made or have made?

A. I know they made fibres at one time.

Q. Do you know what they do now?

A. No sir.

Q. You make fibres?

A. Yes sir.

Q. But you don't know the names of your competitors, do you?

A. Don't know the names?

Q. You don't know whether this Fletcher Company is a
611 competitor with you in the fibre paper business or not?

A. They are not a competitor of ours.

Q. They don't sell fibre paper?

A. Yes sir, but they make a different grade.

Q. Then you do know they make fibre paper?

A. No, I am not positive. They did make fibre papers.

Q. They did?

A. Yes sir.

Q. You change that answer then, do you?

A. Well, I didn't grasp your question the first time.

Q. Oh, you didn't grasp it.

A. No sir.

Q. Well, all right, take your time on any question and get a good grasp on it.

A. I shall try to.

Q. That is right. Does the Fletcher Company sell its product between Chicago and the Rocky mountains?

A. That I don't know.

Q. You don't know anything about that?

A. No sir.

Q. How is it about Ypsilanti Paper Company? What does that do?

A. I don't know anything about them.

Q. And about the Detroit Sulphite Fibre Company, do you know anything about that?

A. I did several years ago, but not now.

Q. Don't know anything about it?

A. No sir.

Q. Don't know what it makes?

A. Don't know what they make now.

— Or where it sells its product?

A. No sir.

Q. And about the Minnising Paper Company, do you know anything about that?

A. No sir.

Q. Don't know anything about that?

A. No sir, not at all.

612 Mr. KELLOGG: Where is that? I suppose it is in Minnising, Michigan. There is such a place on the Northern peninsula.

Q. Do you know anything about the Central Paper Company of Muskegon, Michigan?

A. No sir.

Q. Don't know anything about that?

A. No sir.

Q. And the Hartford City Paper Company, do you know anything about that?

A. No sir.

Mr. KELLOGG: Where is that?

Mr. FLANDERS: Hartford City, Indiana.

Q. Don't know anything about that?

A. No sir.

Q. The fact of the matter is, you don't know much about the paper mills that are in competition, do you?

A. Oh, I know something about them.

Q. Well, we will go a little farther. Did you ever hear about the Mishewaukee Paper and Pulp Company?

A. No sir.

Mr. KELLOGG: Where is that?

Mr. FLANDERS: Mishewaukee, Indiana.

Q. Do you know anything about that?

A. No sir.

Q. That is a stranger to you, too.

A. I have heard of those mills, but I don't know anything about them now.

Q. Oh.

A. They were never considered competitors; they were most of them old mills that were not considered competitors.

Q. How do you know whether they were considered competitors? Do you mean you didn't consider them competitors?

A. No, the people that I have worked for don't consider them competitors.

Q. Oh, that is it. You don't know what they made or where they sold their products.

A. I used to know what some of them did, but I haven't paid any attention to them lately, what they are making, because
613 sometimes mills change their product, make first one grade and then another.

Q. Yes, I am perfectly aware of that. Sometimes it rains and sometimes it shines. I ask you now, do you now know what the product of these different mills is and where they market it.

A. No, I do not.

Q. Not any of these that I have asked you about.

A. In a general way I know what their product is.

Q. Well, take it in a general way then. What is their product in a general way.

A. I know the product of some of them, but don't know now exactly what they are making.

Q. Well, in a general way what is their product? You said you did know in a general way.

A. Some of them make wrapping and some of them make print, and some of them make fibre.

Q. And do you know in a general way—

A. —and some of them make book.

Q. You stick to the book, don't you? Do you know in a general way that these mills market their product west of Chicago and east of the Rocky mountains?

A. No, a great many of them market their product east of Chicago; that is, some of it anyway.

Q. Have you any objection to answering my question? Do you know in a general way that these mills market their product, or some of it, west of Chicago and east of the Rocky mountains?

A. Well, some of it they may, yes.

Q. They are in competition for that trade, then, are they not?

A. Some of it, yes.

Q. All they can get of it, aren't they?

A. Those Michigan mills don't wish to come west very much with their product.

614 Q. How is — about the Wayne Paper Company?

Mr. KELLOGG: Where is that?

Mr. FLANDERS: Fort Wayne, Ind.

Q. Do you know anything about that mill?

A. No sir.

Q. Do you know what they made?

A. No, I don't know anything about them.

Q. Ever hear of that mill?

A. Never heard of them.

Q. And the Thielmany Paper Company?

Mr. KELLOGG: Where is that?

Mr. STUART: Kaukauna, Wis.

Q. Did you ever hear of that?

A. Yes sir.

Q. Do you know anything about that, what they make?

A. I know what they did make; I don't know what they are making today.

Q. When?

A. A year or two ago I knew what they were making.

Q. That is as near as you can come to knowing what the product of the Thielmany Company is?

A. Only by report; that is what I hear.

Q. Suppose you tell us what their product is as nearly as you can.

A. Tissue papers.

Q. Tissue papers. Anything else?

A. I don't know of anything else they make there.

Q. Is that a manila paper?

A. No sir.

Q. Has it made fibre paper?

A. I haven't heard of them making any for some time.

Q. For how long?

A. Oh, about three years.

Q. Did they make it before that?

A. Yes sir.

615 Q. Union Paper and Bag Company of Kaukauna, Wis., do you know anything about that?

A. I know there is such a mill there.

Q. But you don't know anything about its product?

A. Yes, I know they make bag paper for paper bags.

Q. Is that manila paper?

A. I think it is.

Q. Are you uncertain about that?

A. Well, some of them make—I don't know whether they are making fibre now or manila.

Q. I asked you if bag paper was a manila paper.

A. Not always; sometimes fibre paper is.

Q. Is it one or the other?

A. They may use fibre for making bags.

Q. Well, is it either fibre or manila?

A. There are papers use- for making bags that are neither fibre nor manila.

Q. I didn't ask you that. I asked you about this company.

A. I understand they always made manila for bags.

Q. You haven't any doubt about that, have you?

A. I don't know anything about it now; that is what they used to make.

Q. When did this lapse of memory on your part come in, such utter ignorance of what these mills that surround you are doing? When did that first strike you?

A. Because I haven't paid any attention to the mills for the last two years.

Q. No, but when did it come on? When did the seizure take you?

A. Commenced immediately after I quit the C. W. Howard Company. I was not interested.

Q. You dropped that business then?

A. Yes sir, I dropped the business.

616 Q. You never thought of it since?

A. Didn't think of it since.

Q. And even though you have been the general manager of the Island Company, you didn't find out what these mills within a radius of fifty miles of you were doing?

A. No sir, I didn't care anything about it.

Q. Take the York-Haven Paper Company; ever hear about that?

A. The New York, Haven and Pennsylvania?

Q. Yes.

A. I have heard of them.

Q. Do you know what they make?

A. They used to make fibres.

Q. Before you lost your interest in it?

A. Yes sir.

Q. And did they sell that fibre paper west of Chicago and east of the Rockies?

A. I don't know where they placed their product.

Q. You don't know? And the New York and Pennsylvania Company, how about that?

Mr. KILLOGG: Where is that?

Mr. FLANDERS: New York and Pennsylvania Company,—where is that, Mr. Stuart?

Mr. STUART: Loc't Haven, Pennsylvania.

Q. Do you know anything about that?

A. I have heard of them.

Q. Don't know anything about them, though?

A. They used to make book and fibres when I was interested in them.

Q. Still sticking to the books?

A. Well, I am telling the facts.

Q. Did they market their products west of Chicago and east of the Rockies?

A. I don't know where they did market it.

Q. Don't know anything about it?

A. No sir.

617 Q. The fact of the matter is, isn't it, Mr. Brown, that since you left the C. W. Howard Paper Company, you have practically given this question very little, if any, attention?

A. Not as much attention as if I had been in business.

Q. Well, isn't it what you said within ten minutes: that since you left the C. W. Howard Paper Company you had no interest in these matters?

A. No special interest.

Q. No special interest?

A. No.

Q. And as a matter of fact you don't know much about what any of these mills are making or where they are marketing their product?

A. Only in a general way, that is all.

Q. And all you have known about it you have told on this examination, haven't you?

A. I have answered everything that I have been asked.

Q. Well, if you know anything more about these mills that I have asked you about than what you have told, as to what they made, or where they market their product, be good enough to state it, and take your time at it.

A. Please repeat that question.

Mr. FLANDERS: Read the question, Mr. Examiner, and make a minute of how long he takes to answer.

Mr. KELLOGG: And compare it with some of the times that Mr. Alexander and some other of your witnesses around here were waiting for you to give them a cue.

Mr. FLANDERS: Simply give him the time to answer my question, as much time as he thinks is necessary.

The question was read.

618 A. I have nothing further to say.

Q. Now then take the next, Hartje Brothers.

Mr. KELLOGG: Where are they?

Mr. FLANDERS: Of Steubenville, Ohio.

Q. Know anything about them?

A. I never heard of them.

Q. You never heard of them?

A. No sir.

Q. Now, did you ever hear of a concern called the International Paper Company?

A. The International Paper Company?

Q. Yes.

A. Yes sir.

Q. Have heard about that?

A. Yes sir.

Q. What kind of paper does that make?

A. They are sales agents. They make print, most of them. That is, the International Paper Company is a combination of mills, and they make print paper—mostly print.

Q. Great Northern: did you ever hear about that?

A. Yes sir.

Q. What do they make?

A. They did make print.

Q. What?

A. The last I knew of them they were making print.

Q. And fibre?

A. I don't know of them making any fibre.

Q. And selling print west of Chicago and east of the Rockies?

A. I don't know where they sold it.

Q. Don't know where they have sold it?

A. No sir.

Q. Now, you are not very friendly to some of these men that are stockholders or directors or officers in this General Paper Company, are you?

A. I have nothing against any of them.

Q. Nothing against any of them?

A. No sir.

Q. Did you say to C. A. Babcock in this room, or the room
619 where the testimony was being taken last week, referring to Mr. Kimberly, and using a profane and vile epithet in relation to him, that you would frighten him?

A. I never said anything of that kind.

Q. Nothing of that kind?

A. No sir.

Q. Quite sure about that?

A. I am positive about it.

Q. Did you say in relation to Mr. Kimberly, using a profane or obscene epithet, in this building, in the room where testimony was being taken last week, in Milwaukee, in relation to Mr. Kimberly, that you would scare him to death?

A. I never said anything of the kind.

Q. Nothing of the kind?

A. No sir.

Q. To Mr. C. A. Babcock?

A. No sir.

Q. Quite sure about that?

A. Yes sir; positive about it.

Q. Well, now, then, have you made unfriendly expressions about other men connected with this General Paper Company?

Mr. KELLOGG: That is objected to; the witness is entitled to have you call his attention to the time and place of the conversation, and you knew it.

Mr. FLANDERS: You say I knew it?

Mr. KELLOGG: Yes, you know that he is entitled to that.

Mr. FLANDERS: I don't know anything of the kind. That is one of the things that I am ignorant about. I had supposed that you could show that a witness was unfriendly, by his admission; and with all due respect to you I still think so.

Mr. KELLOGG: I object to it as not naming the person or time when the conversation or expressions took place.

620 A. No sir.

Q. Or about Mr. Kimberly?

A. No sir.

Q. Are you on friendly terms with Mr. Kimberly?

A. Never knew the gentleman only by sight.

Q. Have you been friendly to him or unfriendly to him?

A. I never did an unfriendly thing toward him.

Q. Never said an unfriendly thing?

A. No sir.

Q. You are on friendly terms with all these other men?

A. I am not unfriendly, no sir.

Q. You are not unfriendly toward any of them?

A. No sir.

Q. Now, then, are you quite sure that in the list of your occupations and the accounting for your time this morning that you have given all the occupations that you have followed, and I will call your attention particularly to the two years when you said you were doing nothing when you were around about Menasha and Neenah. Were you in fact doing nothing?

A. Yes sir.

Q. What?

A. Yes sir.

Q. Had you any connection with any enterprise of any kind?

A. No sir.

Q. With any house of any kind?

A. No sir.

Mr. KELLOGG: I desire the examiner to incorporate in the record as part of Mr. Brown's testimony the first column of Petitioner's Exhibit 137, referred to in the testimony.

Said column is as follows:—

621

Constituent Companies.

Kimberly and Clark Co.
 Atlas Paper Co.
 Combined Locks Paper Co.
 The C. W. Howard Co.
 The John Edwards Mfg. Co.
 The Nekoosa Paper Co.
 Centralia Pulp & Water Power Co.
 Grand Rapids Pulp & P. Co.
 The Wisconsin River Paper & Pulp Co.
 Wausau Paper Mills Co.
 Tomahawk Pulp & Paper Co.
 Dells Paper & Pulp Co.
 The Falls Mngf. Co.
 Hennepin Paper Co.
 The Itasca Paper Co.
 Northwest Paper Company.
 The Petoskey Fibre Paper Co.
 River Side Fibre and Paper Co.
 Wolfe River Paper & Fibre Co.
 Menasha Paper Co.
 Flambeau Paper Co.
 E. A. Edmonds.
 Rhinelander Paper Company.
 Geo. W. M.
 Consolidated Water Power & P. Co.

Subscribed and sworn to before me this 24th day of May, 1905.

Special Examiner.

622

James G. Flanders, Volume 8.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of John C. Brocklebank.

6th Day, May 24, 1905.

Direct examination	Page. 405
Cross examination.....	
Re-direct examination.....	
Re-cross examination.....	

ROBERT S. TAYLOR,
Special Examiner.

623 JOHN C. BROCKLEBANK, being duly sworn by the examiner as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. KELLOGG :

Q. Mr. Brocklebank, where do you reside?

A. Chicago.

Q. What is your business?

A. I am western manager of the Manufacturers Paper Company.

Q. What is the Manufacturers Paper Company—a corporation?

A. A corporation.

Q. Where is its principal office?

A. New York city.

Q. Do you have an office in Chicago?

A. Yes sir.

Q. What is the business of the Manufacturers Paper Company?

A. Selling print paper on commission.

Q. How long have you been in that business?

A. Personally?

Q. Yes sir.

A. Since March 1, 1889.

Q. Where did you commence it?

A. In Chicago.

Q. From that time to the present time have you been the western manager of the Manufacturers Paper Company?

A. I have.

Q. And has it been doing business in Chicago?

A. It has.

Q. Are you familiar with the news print, manila and fibre trade in the West?

A. I am more familiar with the print situation.

Q. With the print situation?

A. Yes sir; and partially with the fibre.

624 Q. What is print paper used for, mostly?

A. It is used for all methods of printing purposes, dodgers and news papers.

Q. What is the bulk of the paper used for?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. As I view it, for the publication of newspapers.

Q. Do you know about the time the General Paper Company was organized?

A. I have a fair recollection of it.

Q. About when was it?

A. About June or July 1, 1900.

Q. Commenced business about that time, did it?

A. About that time, I should judge.

Q. What has been its business since then?

A. The marketing of print and fibre papers.

Q. Do you know generally from what mills?

A. In a general way.

Q. Have you come in contact with them, so as to know generally what mills they represent? I don't ask you to state in detail, but generally.

A. Well, I know what mills are presumed to place their productions in their hands.

Mr. FLANDERS: It is not necessary for you, unless you want to, Mr. Brocklebank, to give any presumptions.

Q. Have you ever heard of the Kimberly and Clark Company?

A. I have.

Q. Does that company make print paper?

A. I believe it does.

Q. Do you know whether the General Paper Company sells its products?

A. I believe it does.

625 Q. The Atlas Paper Company?

A. I do not know.

Q. The Combined Locks Paper Company?

A. I do.

Q. You know they sell their product through the General Paper Company, don't you?

A. I do.

Q. The C. W. Howard Company?

A. I do not know.

Q. Well, what is your understanding about it?

A. I have no personal knowledge of the C. W. Howard Company.

Q. The John Edwards Manufacturing Company?

A. Yes sir.

Q. The Nekoosa Paper Company?

A. Yes sir.

Q. The Centralia Pulp & Water Power Company?

A. Yes sir.

Q. The Grand Rapids Pulp and Paper Company?

A. Yes sir.

Q. The Wisconsin River Paper and Pulp Company?

A. Yes sir.

Q. The Wausau Paper Mills Company?

A. Not of my own knowledge.

Q. The Dells Paper and Pulp Company?

A. Not of my own knowledge.

Q. The Falls Manufacturing Company?

A. Not of my own knowledge.

Q. The Hennepin Paper Company?

A. Not of my own knowledge.

Q. Well, you understand about those, if not of your own knowledge?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

Q. You don't sell for them, do you?

A. I do not.

Q. Do you know who does?

Same objection by defendants.

626 A. I do not, of my own knowledge, except by hearsay.

Q. The Itasca Paper Company?

A. I believe the General is selling for the Itasca.

Q. The Northwest Paper Company?

A. I do not know.

Q. How about the Petoskey Fibre Paper Company?

A. I do not know.

Q. The Riverside Fibre and Paper Company?

A. I do not know.

Q. The Wolfe River Paper and Fibre Company?

A. Yes sir.

Q. The Menasha Paper Company?

A. I believe so.

Q. Flambeau Paper Company?

A. Yes sir.

Q. Rhinelander Paper Company?

A. Yes sir.

Q. Consolidated Water Power and Paper Company?

A. Yes sir.

Q. Now those that you mentioned that you didn't personally know of, do you sell for them?

Mr. FLANDERS: That is objected to for the same reasons.

A. I do not.

Q. Do you sell for anybody on that list?

Same objection.

A. I do.

Q. Which ones?

A. The Centralia Pulp and Water Power Company, Combined Locks Paper Company, John Edwards Manufacturing Company, Tonahawk Pulp and Paper Company.

Q. Do you handle their entire product?

A. I do not.

Q. Were you selling for them prior to the time the General Paper Company was organized?

Mr. FLANDERS: I wish to enter my objection again of counsel putting leading questions to his own witness.

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Mr. KELLOGG: Well, we will see about that.

Q. Were you selling for them prior to the organization of the General Paper Company, Mr. Brocklebank?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and leading.

A. I was.

Q. Now I think you said that as to some of those companies that the General Paper Company was the selling agent.

Same objection, leading and suggestive, and putting in the witness' mouth something that he has not said.

A. I did.

Q. You say you did say so?

A. In answer to your first question I did say so, yes sir.

Q. Now, how is it that you are selling any of the products of those mills?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. Because of a tentative contract.

Q. What contract do you refer to?

Same objection.

A. Contract I had with those mills up to 1900.

Q. Mention one of them.

Same objection.

Q. Take the Centralia Pulp and Water Power Company: at the time of the organization of the General Paper Company were you selling its product?

A. We were.

628 Q. Did you have some contracts out?

Same objection by defendants.

A. Yes sir.

Q. Who with?

Same objection.

A. Several publishers.

Q. Can you tell me who they were?

Same objection.

A. It is rather difficult to enumerate certain contracts in a very large business.

Q. Will you please state the fact, if you know.

Same objection.

A. I had made large roll print contracts with a number of the daily papers throughout the western country. Those contracts had been placed with the Centralia Pulp and Water Power Company.

Q. What contracts were those?

Same objection.

Q. Name the paper?

A. I believe the Saginaw News was a contract.

Q. The Saginaw—

A. The Saginaw Evening News, Saginaw, Michigan.

Q. What other publisher?

Same objection.

A. Friepress of Chicago.

Q. Any other?

Same objection.

629 A. I believe the John Anderson Publishing Company.

Q. Where is that?

A. Of Chicago.

Q. Any other?

Same objection.

A. I don't remember.

Q. When did those contracts run out?

Same objection.

A. Those contracts expired from year to year; in some instances the length of time was two years.

Q. When did the first expire after the organization of the General Paper Company?

Same objection.

A. Some expired about the first of January; others expired about the first of July.

Q. The first of January 1901, you mean?

A. 1900.

Q. Oh, first of January, 1900?

A. Yes sir.

Q. And some about the first of July, 1900?

A. Yes sir.

Q. What did you do when those contracts expired?

Same objection.

A. I renewed them.

Q. Who did you do business with, what person?

Same objection.

A. The publishers of the papers.

Q. What person in the Centralia Pulp and Water Power Company?

A. Mr. Garrison.

Q. Had he at that time made a contract with the General Paper

Company making that company the exclusive agent of the Centralia Pulp and Water Power Company?

630 Mr. FLANDERS: Same objection, and as leading. I request the witness to confine his answer to what he knows of his own knowledge.

A. I do not know.

Q. Did the subject come up?

Same objection.

A. It did not.

Q. Well then, this was before the organization of the General Paper Company, was it?

Same objection and as leading.

A. Yes sir.

Q. When those contracts ran out after the organization of the General Paper Company, what did you do?

Same objection.

A. I renewed them.

Q. How?

Same objection.

A. By making my proposition.

Q. To whom?

Same objection.

A. To publishers, for renewing the contract.

Q. What did you say to Mr. Garrison about it?

Same objection and as irrelevant, incompetent and immaterial and hearsay.

A. I told Mr. Garrison I proposed to renew the contract.

Q. What did he say?

Same objection by defendants.

A. He said, I believe, he was in doubt as to his ability to give me the paper.

Q. Why?

Same objection.

631 A. Because he had made a contract to deliver his tonnage to the General Paper Company.

Q. What did you say to that?

Same objection.

A. I told Mr. Garrison that while he had withdrawn his tonnage from the Manufacturers Paper Company I considered that we should control the business we had originally placed with the Centralia

Pulp and Water Power Company, and which we had placed there for a number of years, and that under our contract we were entitled to that tonnage.

Mr. FLANDERS: Under the contract with whom, Mr. Brocklebank?

WITNESS: With the Centralia Pulp and Water Power Company. And if he did not care to accept the contract and give us that tonnage we proposed to put in eastern tonnage from our eastern mills.

Q. What did Garrison say?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and hearsay, and not within the scope of any agency, and no proper foundation laid.

Q. Well, it is rather difficult to remember his precise words.

Q. What did he say, as near as you can recall,—the substance?

Same objection.

632 A. He said he would try and see if he could not arrange to give me the tonnage.

Q. Did he say he would see?

Same objection.

A. Well, he didn't say whom he would see.

Q. Did he mention the General Paper Company?

Mr. FLANDERS: That is objected to for all the reasons stated and as leading.

A. I don't think so.

Q. Did you see Mr. Stuart about this?

Mr. FLANDERS: Objected to for all the reasons above stated.

A. Not at that time.

Q. Well, did you afterwards?

A. I did.

Q. When was this that you saw him?

Same objection.

A. I think it was in 1902.

Q. January?

A. I couldn't say as to that, the precise date.

Q. Well, was it about the 1st of January.

Same objection.

A. No; on several of the contracts it wasn't.

Q. Well, was it on some of them?

Same objection.

A. I think not.

Q. About when did you see him, as near as you can recollect, on this contract with the Centralia Pulp and Water Power Company?

633 Same objection.

(No answer.)

Q. Did you get the consent of the General Paper Company to let you have these contracts you refer to with the Centralia Pulp and Water Power Company?

Objected to as irrelevant, incompetent, grossly leading and calling for the opinion of the witness.

Mr. FLANDERS: I wish to state upon the record that the witness should confine himself to stating what was said and done, if anything, giving names, dates, places, and what was said and done; but I object to it on all the grounds above stated, and I insist that the witness confine himself to what was said and done, by whom said and done, and the time and place. And I inform you, Mr. Brockelbank, that that is your privilege.

Mr. KELLOGG: I shall insist that Mr. Brockelbank answer this question.

The question was read.

WITNESS: Read me that question again.

The question was read.

Mr. E. ALLEN FROST (attorney for the Manufacturers Paper Company): The witness need not answer that question in that form. If the witness wants to tell, and the counsel wants to know what was done, and the witness recalls or knows, well and good; but that does ask for a conclusion.

634 Mr. KELLOGG: If Mr. Frost wishes to appear for this witness, I would like to have him enter his appearance in the case.

Mr. FLANDERS: Mr. Frost has a perfect right to make a statement here in the court room, as much right as you or I.

Mr. KELLOGG: I would like to know.

Mr. FROST: I represent the Manufacturers Paper Company, which was at one time a party to these proceedings. Mr. Brockelbank has since been subpoenaed here, and of course he has a right to have counsel present.

Mr. KELLOGG: Of course I don't object to it at all, only I want to know if you appear for him or not.

Mr. FROST: While we have no disposition to retard this examination, still at the same time I want to preserve Mr. Brockelbank's rights, whatever they may be, in this hearing and in the other hearing, to the extent of the law and its safeguards be thrown around him.

Mr. KELLOGG: That is perfectly proper.

Q. Now, Mr. Brockelbank, did you get the consent of the General Paper Company, or any officer, to renew these contracts with the Centralia Pulp and Water Power Company?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and grossly leading, and calling for the opinion of the wit-

ness; and I insist again that the witness should confine his testimony to what was said and done.

A. I will reply, in answer to your question: I closed the contracts and I tendered them to the Centralia Pulp and Water Power
635 Company through the General Paper Company, and they were accepted.

Q. And the General Paper Company returned them to you?

Mr. FLANDERS: That is objected to for all the reasons stated.

A. I don't understand your question.

Q. That is, you did this business, then, finally, through the General Paper Company; is that correct?

Mr. FLANDERS: I object to that for the reasons stated, and as grossly leading and calling for the opinion of the witness.

Mr. KELLOGG: This witness is, I think, a hostile witness, and I have a right to cross-examine him. That is the only way I can get it out of him.

Mr. FLANDERS: I object to that statement as utterly unwarranted by the record. The witness has answered fully and fairly every question that was put to him, and unless every witness in the United States is hostile to the distinguished counsel for the Government, there is no evidence that this witness is.

Q. You closed the contracts, did you, through the General Paper Company?

Mr. FLANDERS: That is objected to for all the reasons stated, and as grossly leading.

Q. Is that correct?

A. Practically.

Q. Now, did you have any understanding with the General Paper Company that the General Paper Company should for a term
636 of at least one year, allow the Manufacturers Company to renew any orders which it may have for paper for, which is being supplied by the General Paper Company's mills, the General Paper Company being the sole judge as to what prices, terms and conditions they make, either directly or indirectly, to the customers of the General Paper Company, and that the Manufacturers Company agreed not to offer any paper from the East to any customer, either directly or indirectly, of the General Paper Company?

A. I decline to answer that general question.

Q. You decline to answer it?

A. In the form it is put, yes sir.

Q. Well, did you have an understanding with the General Paper Company?

Mr. FLANDERS: Now just wait a minute, Mr. Brockelbank. That is objected to as irrelevant, incompetent, immaterial, grossly leading, calling for the opinion of the witness, and I might also add as unintelligible.

Q. Did you have an understanding of that kind with the General Paper Company?

Mr. FLANDERS: All the objections renewed, including the fact that it is leading. I insist that the witness confine his testimony to what was said and done.

WITNESS: Of what kind?

Q. Well, that the General Paper Company should for a term, at least one year, allow the Manufacturers Company to renew any orders which it then had with any mills which were supplying the paper company, those mills being in this combination and
637 having contracts with the General Paper Company?

Mr. FLANDERS: Now wait a minute, Mr. Brockelbank. That is objected to for all the reasons hereinbefore stated, and you are reminded again, as you have been by Mr. Frost, who formerly represented the Manufacturers Paper Company in this case, that it is your right and privilege and duty to tell what was said and done, and not answer any drag-net question that calls for your opinion.

Mr. KELLOGG: Now I want to say, Mr. Brockelbank, that while I want to be perfectly courteous to you, that I shall insist on the answer to these questions, and if you do not answer them, you have got to be responsible to the United States court. That is all there is about it.

Mr. FLANDERS: Well, that is a threat that I object to.

Mr. KELLOGG: I am not threatening. I want to be courteous, but I want an answer to this question.

Mr. FLANDERS: "I will not call him villain, because he happens to be chancellor of the exchequer."

Q. Now please answer my question.

Mr. FLANDERS: You won't answer a thing, Mr. Brockelbank, until I make my objection. I object to the continued course of the distinguished counsel for the Government in bringing men upon the stand as his witnesses and threatening them, as he has done over and over again, with the consequences of their failure to please him by their answers and to accept his questions. And I insist
638 that it is improper, and I say to the witness that you undoubtedly have counsel on whom you rely here, who will abundantly protect your rights and privileges.

Mr. KELLOGG: Now, Mr. Examiner, will you read my last question to Mr. Brockelbank?

Mr. Flanders insisted that all the remarks made since the question was put be also read.

Mr. Kellogg said he would ask another question, objecting to anything but his question being read.

Q. Did you have an arrangement with the General Paper Company on or about January, 1902, or shortly before that time, that the General Paper Company would allow you to renew orders which

you then had, or contracts which you then had, with mills which were then in the combination and had then made the General Paper Company their general selling agent?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, calling for the opinion of the witness upon a subject on which he is not competent to testify, and I insist that the witness confine his testimony upon any subject, and especially upon this subject, to what was said and done.

A. The Manufacturers Company had such a tentative arrangement under coercion.

Q. Now that is what I want. Now state what it was.

Same objection.

A. The position being that the Manufacturers Paper Company was determined to hold on to their western business, and having eastern paper which they could put in on those contracts, 639 although at a loss if they did so, they preferred to offer the tonnage to the mills that had formerly held the contracts.

Q. Is that all the answer you wish to make now?

A. Yes sir.

Mr. FLANDERS: I move to strike that out.

Q. Wasn't there something further to the arrangement than that?

Same objection.

Q. Were not the prices to be satisfactory to the General Paper Company?

Same objection, and leading.

A. No sir.

Q. Did you not agree, as a part of that, not to sell to the customers of the General Paper Company?

Same objection and as leading.

A. There may have been such a tentative understanding.

Q. Well, that is what I want to know.

Mr. FLANDERS: I move to strike that out as irrelevant, incompetent and immaterial.

Q. As a part of the arrangement whereby you were allowed to renew those contracts, did you not agree in substance with the General Paper Company not to compete with the General Paper Company, with their customers?

Objected to as irrelevant, incompetent, immaterial and leading, calling for the opinion of the witness.

640 Q. Please answer.

A. I would answer the question if there were not two words in that.

Q. What is that?

A. I would answer the question if there were not two words in the question which I object to.

Q. Well, please answer it in your own way.

Mr. FLANDERS: Same objection.

A. Please read the question.

The question was read.

WITNESS: Strike out the word "allowed."

Q. Well, go ahead and answer in your own way.

The balance of the question was read at the request of the witness, omitting the word "allowed."

A. In the first place, we renewed contracts whether we were allowed or not, and tendered them to the respective mills from the General Paper Company.

Q. Yes.

A. And at the time you speak of we had a sufficient eastern tonnage to make strong competition with the G. P. Co.

Q. Please state what that arrangement was. You haven't stated it all, Mr. Brockelbank.

Mr. FLANDERS: That is objected to for the same reasons.

A. And as to a certain extent agreed not to interfere with their legitimate contracts.

Q. What do you mean by "their legitimate contracts"?

A. Certain roll print contracts that the individual mills of the West had had for a number of years, the same as I had held my business for a number of years.

641 Q. Did you not state to them, in substance, that the Manufacturers Paper Company was willing to agree not to offer any paper from the East to any customer of the General Paper Company, either directly or indirectly?

Mr. FLANDERS: Objected to as irrelevant, incompetent, immaterial and leading, suggestive, and calling for the opinion of the witness.

A. That might have been said under the conditions that prevailed at that time.

Q. Now, what is your recollection as to whether it was said or not? What is your recollection?

Mr. FROST: Well, I interpose the objection to that, Mr. Kellogg, that you haven't shown—it doesn't appear in this record any foundation for it; no transaction with any officer or any official of this paper company or any other company. It is very indefinite, and I want at this time to state—and I think you should in fairness to

this witness, because the Manufacturers Paper Company and the witness want to stand before the people as performing their full duty, and it is not necessary to threaten this witness, and he does not want to be in the attitude where this is done because he doesn't merit it, nor in any stage of the proceedings do we think he will merit it. That question is without proper foundation, and so general that I think in fairness to the witness and in fairness to the inquiry it ought to show some connection.

642 Mr. KELLOGG: I have no desire to threaten Mr. Brockelbank and I don't do it at all. I will put some more questions.

Q. Whom did you have your conversation with in the General Paper Company?

Objected to as irrelevant, immaterial and incompetent.

A. At what time?

Q. Well, these that you are referring to when you renewed these contracts.

Mr. FLANDERS: If you are going to state any conversation, be good enough to specify the time.

A. It is rather difficult to specify conversations with individuals at unknown times. If you would grasp the situation, Mr. Kellogg, of conditions at that time you would appreciate why I can't remember or answer you as intelligently as you would like to have me.

Q. Now, Mr. Brockelbank, you have stated to a tentative arrangement that you made here, whereby you were not to offer, or the Manufacturers Paper Company was not to offer, paper from the East to customers of the General Paper Company. Now with whom was that arrangement made?

Mr. FLANDERS: That is objected to as stating something that the witness has not testified to at all. That is irrelevant, incompetent and immaterial.

A. That arrangement was suggested by myself, first, to Mr. Frank Garrison, as the president of the Centralia Pulp and Water Power Company.

Q. Well, what officer of the General Paper Company did you talk with afterwards?

643 Mr. FLANDERS: I move to strike that out for all the reasons stated, and as not responsive to the question.

Q. Do you know Mr. W. Z. Stuart?

A. I do.

Q. Did you talk with him about it?

A. At what time?

Q. About January, 1902.

A. I believe so.

Q. At that time were not these Garrison contracts (the renewal of these Garrison contracts) under consideration?

Mr. FLANDERS: That is objected to as irrelevant, immaterial, incompetent and leading.

A. I think so.

Q. Now, referring to the renewal of those contracts, did you then and there agree, in substance, with Mr. Stuart for the General Paper Company—you representing the Manufacturers Paper Company—not to offer any paper from the East to any customers, either directly or indirectly, of the General Paper Company if you were permitted to renew these contracts?

Mr. FLANDERS: That is objected to for all the reasons stated, and I insist that the witness should confine his answer to what was said and done and by whom said and done. , Objected to also as calling for the opinion of the witness.

A. That was never formally agreed upon.

Q. What was said about it?

A. The question was discussed.

Q. Did you say that you would not offer paper from the East to the customers of the General Paper Company?

644 Mr. FLANDERS: I object to that for all the reasons stated, and on the ground that the counsel persistently tries to lead this witness.

Q. Did you state that, Mr. Brockelbank?

A. Kindly read the question.

The question was read.

A. I believe I did.

Q. Did Mr. Stuart make that a condition of renewing these contracts?

Mr. FLANDERS: That is objected to for all the reasons stated; as leading and calling for the opinion of the witness; and I insist again that the witness should confine his testimony to what was said and done and by whom said and done.

A. I do not remember that he did.

Q. Well, what did he say about it?

Same objection.

A. He agreed, with the consent of the mill owners, to continue to supply the tonnage on our contracts.

Q. But where these conditions made a part of the agreement?

Mr. FLANDERS: All the objections heretofore made renewed.

A. It was talked of.

Q. Well, was it made a part of the understanding between you and Mr. Stuart?

Mr. FLANDERS: I object to that, and insist—

Mr. KELLOGG: Let me ask the question before you get to your objection.

645 Mr. FLANDERS: Well, I won't do it until I put my objection down or you say you won't listen to it—either one or the other. You can either let me make my objection or say "I won't allow it."

Mr. KELLOGG: Before I ask the question?

Mr. FLANDERS: Yes.

Mr. KELLOGG: Make your objection, then, before I ask the question.

Mr. FLANDERS: I object to the reading of a copy of any alleged memorandum in the question to this witness, and I insist that if the counsel has any memoranda or claims to have any it should be submitted to the witness for his inspection.

Mr. KELLOGG: Very well, I will do it. (Tearing out sheet of paper from among some other papers.) I show the witness a copy of a memorandum and ask to have it identified.

Mr. FLANDERS: Do you claim that is the original memorandum?

General WINKLER: He says it is a copy.

Mr. KELLOGG: Now I show the witness a memorandum, or a copy of a memorandum (I don't know which it is). Leave it as it was before—a copy of a memorandum. Get at that first.

The same was marked Petitioner's Exhibit 138.

Mr. FLANDERS: I wish, Mr. Examiner, to enter my objection. I object to the production of anything in connection with this matter which is, or purports to be, a copy of any memorandum; and insist that the original is the best and only evidence admissible.

646 Mr. KELLOGG: Well, we will get the original.

Q. I show you Petitioner's Exhibit 138, Mr. Brockelbank. Please read it to yourself carefully.

The witness read the exhibit.

Mr. FLANDERS: Just bear in mind, Mr. Brockelbank, there is no question to you yet.

Q. Is that a memorandum of that agreement that was made by Mr. Stuart?

Mr. FLANDERS: Now wait a minute. I object to that until the memorandum has been submitted to us.

Mr. KELLOGG: Very well, sir; read it.

Mr. FLANDERS: They do that in St. Paul, don't they?

Mr. KELLOGG: Sure. (Handing Petitioner's Exhibit 138 to Mr. Flanders.)

The exhibit was read by the attorneys for the defendants, and also by Mr. Frost.

Q. Is that the memorandum made by Mr. Stuart? (Handing the exhibit to the witness.)

Mr. FLANDERS: If you know.

A. I do not know.

Q. Is that the substance of the memorandum?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. Practically as suggested.

Q. Did you keep a copy of the memorandum?

Same objection.

647 A. I had a copy of the memorandum.

Q. Have you got it now?

A. I haven't.

Q. Do you know where it is?

A. I believe it is destroyed.

Q. Will you make search and see, Mr. Brockelbank, as I wish to make every effort to procure the original memorandum.

A. I never had the original memorandum.

Q. Did you have a copy of it?

Same objection.

A. I believe so.

Q. Given to you by Mr. Stuart?

Same objection.

A. Yes sir.

Q. And as near as you recollect, is that the substance of the memorandum?

Same objection and as calling for the opinion of the witness.

A. I couldn't say as to that.

Q. Well, now, Mr. Brockelbank, you recall the substance of that memorandum, do you not?

A. Yes sir.

Mr. FLANDERS: That is objected to.

Q. Is that the substance of what you agreed on?

Mr. FLANDERS: That is objected to for all the reasons stated, and as calling for the opinion of the witness.

A. That was merely a memorandum, and always remained a memorandum.

Q. Well, to the best of your recollection, is that a copy of the memorandum?

A. To the best of my recollection that is a copy.

648 Mr. FLANDERS: I move to strike that answer out for all the reasons hereinbefore stated.

Q. Now, what are these initials "G. P. Co."? What do they refer to?

Objected to as irrelevant, incompetent and immaterial.

A. I don't know of my own knowledge.

Q. You know what that means, don't you? General Paper Co., isn't it?

A. I presume so.

Q. "M. P. Co."—the Manufacturers Paper Company?

A. I presume so.

Q. Isn't that your understanding from reading that over, Mr. Brockelbank?

A. Yes sir.

Mr. FLANDERS: Same objection to all of this.

Q. Now, these contracts were renewed under that arrangement with Mr. Stuart, were they not?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and grossly leading.

A. Yes and no.

Q. Well, what do you mean by that?

A. Well, that is just it. I mean that that purported agreement was never signed, sealed or carried out in any way, shape or manner.

Q. Well, I know, but it was accepted by you, wasn't it?

Mr. FLANDERS: I object to that as putting in the mouth of the witness something he has not said, grossly leading, suggestive, irrelevant, incompetent and immaterial, and improper. Keep pounding into this witness the answers you want him to give.

649 Q. It wasn't written into a contract and signed, was it?

Mr. FLANDERS: That is the same objection to that. Why can't you ask him what was done with it?

Mr. KELLOGG: Because I don't get any answer.

Q. What was done with it? Mr. Flanders wants me to ask you that question.

Mr. FLANDERS: I don't want you to ask anything, but I ask you to ask your questions as an examiner ought to.

A. Now you have asked me a question and I will answer it. On account of my own individual action in taking several contracts without anybody's consent, and desiring to place them with our western mill, the managers of the G. P. Co. thought they had better meet my bluff. I sent the contracts to the western mills, and the paper was supplied. It was proposed to make that agreement. That was a pencil memorandum originally, when I saw it. I sent it east. It came back corrected.

Q. You sent it east?

A. Yes sir.

Q. It came back how?

A. It came back corrected, and there it was dropped. And one part of that proposed arrangement was carried out, inasmuch as the western mills supplied me my tonnage, and we tentatively acted upon the other part of it because we didn't have a pound of paper to deliver in the West.

Q. Then, you were bluffing them?

A. You bet.

Q. Did you, as a matter of fact, offer any paper after that to the customers west of Chicago, of the General Paper Company?

Objected to as irrelevant, immaterial, incompetent and leading.

650 A. Well, that is a very broad question.

Q. To the publishers?

A. Not direct to the publishers, no sir.

Q. Did not a number of publishers apply to you and you refuse to sell to them?

Same objection.

A. They may have done so.

Q. Do you know Mr. F. W. Kellogg?

A. Very well.

Q. Of the Des Moines News?

A. I don't know him as of the Des Moines Daily News.

Q. Of what paper—the Omaha World?

A. The Kansas City World.

Q. Mr. Ashbough?

A. Yes sir, of the Kansas City World.

Q. Do you remember Mr. Asbough and Mr. Kellogg applying to you on or about May or June, 1902, to sell paper to them, print paper, for some one of their papers?

Mr. FLANDERS: That is objected to as incompetent, irrelevant, immaterial and leading.

A. I believe so.

Q. Did you then and there state to them, in substance, that they were up against it absolutely, that you were at the mercy of the General Paper Company as much as they were; they might just as well go over and close their contracts with Stuart, gracefully, as they would get better terms in that way than otherwise?

Same objection.

A. I did not.

Q. What did you say to them, in substance?

651 Mr. FLANDERS: Are you going to impeach Mr. Brockelbank, your own witness?

Mr. KELLOGG: Well, we will see.

Q. What did you say to him?

A. Well, that was really a very amusing circumstance of Mr. Kellogg that you brought up.

Q. He asked you to sell them paper, didn't he?

A. I beg your pardon?

Q. They tried to make a contract with you for paper, didn't they?

A. Yes sir.

Q. And you declined?

A. I had no paper to offer.

Q. Other publishers in the West, after this talk with Mr. Stuart that you have referred to, asked you to furnish paper, didn't they?

Same objection.

A. I believe so.

Q. And you declined?

Mr. FLANDERS: Same objection.

A. For the same reasons.

Q. And told them you couldn't do it?

A. Yes sir.

Mr. FLANDERS: "For the same reasons"—what do you mean by that?

WITNESS: Had no paper to offer them.

Q. Now, Mr. Brockelbank, do you know Mr. John A. Kimberly?

A. I have that pleasure.

Q. Mr. W. Z. Stuart.

A. Yes sir.

Q. Mr. T. E. Nash?

A. Yes sir.

652 Q. Mr. Frank Garrison?

A. Yes sir.

Q. Mr. J. S. Van Nortwick?

A. Yes sir.

Q. Mr. A. M. Pride?

A. Yes sir.

Q. Mr. George A. Whiting?

A. Yes sir.

Q. Mr. C. A. Babcock?

A. Yes sir.

Q. Mr. L. M. Alexander?

A. Yes sir.

Q. Mr. E. T. Harmon?

A. Yes sir.

Q. Mr. John Daly?

A. Yes sir.

Q. Do you remember any meeting that took place in Chicago about the month of March, 1900, with any of these gentlemen?

A. Yes sir.

Q. Who were present?

Mr. FLANDERS: Objected to as irrelevant, incompetent and immaterial.

A. That is some time ago, and it is very difficult to remember just the—

Q. Give us your best recollection of who were present at that meeting.

Same objection.

A. Well, what particular meeting?

Mr. KELLOGG: Before I go on with that, I wish to offer Petitioner's Exhibit 138 in evidence.

Mr. FLANDERS: That is objected to as incompetent, irrelevant, immaterial, not an original, but confessedly a copy.

Mr. KELLOGG: Either lay the foundation or get the original, Mr. Flanders.

Q. Do you remember a meeting in Chicago, at the Grand Pacific hotel, in March, 1900?

Same objection.

A. I believe there was a meeting, but I don't know whether it was in March or not.

Q. Well, about March, 1900?

A. Yes sir.

Q. Was it in March, 1900?

A. I wouldn't swear to it.

Q. Was there a meeting about the spring of 1900, at the Grand Pacific hotel?

A. I wouldn't swear to that.

Q. What is your best recollection of it?

A. It is very dim. There was a meeting, either in the fall or the spring of 1899 or 1900.

Q. Who were present?

Same objection.

A. There was Mr. Frank Garrison, Mr. K. B. Fullerton, Mr. T. E. Nash; I think Mr. Kimberly and Mr. Stuart.

Q. W. Z. Stuart, you mean?

A. Yes sir.

Q. John A. Kimberly?

A. Yes sir.

Q. The gentleman here in court?

A. I believe so.

Q. Who else?

A. I believe Mr. Harmon.

Q. E. T. Harmon?

A. Yes sir.

Q. What company is he with?

A. I believe he is with the Grand Rapids Pulp and Paper Company.

Q. Who else?

A. I couldn't say.

Q. Mr. J. S. Van Nortwick?

A. Yes, Mr. John S. Van Nortwick was there, I believe.

654 Q. Mr. George A. Whiting?

A. I don't remember, sir.

Q. Mr. A. M. Pride?

A. I believe Mr. Pride was there.

Q. Mr. C. A. Babcock?

A. I don't remember.

Q. Mr. L. M. Alexander?

A. I do not remember distinctly, but I believe so.

Q. Do you recall anybody else that was there?

A. I do not.

Q. Do you know Mr. John Daily of the Grand Rapids Pulp and Paper Company?

A. He may have been there, I don't know; I don't remember.

Q. Who was Mr. Fullerton?

A. The first vice-president and general manager of the Manufacturers Paper Company.

Q. How did this meeting happen to be called?

Objected to as irrelevant, incompetent and immaterial.

A. It was called to encourage the placing of additional tonnage in the hands of the Manufacturers Paper Company.

Q. It was what?

A. It was called for the purpose of encouraging the placing of additional tonnage from the western mills into the hands of the Manufacturers Paper Company.

Q. Who called it?

Same objection.

A. I don't know.

Q. How did you happen to be there?

Same objection.

A. I was there representing the western interests of the Manufacturers Paper Company.

Q. Do you know who notified you of the meeting?

Same objection.

655 A. I believe Mr. Fullerton asked me to get the gentlemen down there to meet him.

Q. And they came down?

A. Yes sir.

Q. Now about when, as near as you can recollect, with reference to the organization of the General Paper Company did that meeting take place?

Same objection.

A. I have no knowledge of when the General Paper Company was organized, Mr. Kellogg.

Q. May 26, 1900?

A. I can honestly say I do not remember whether it was in the fall of 1899 or the spring of 1900.

Q. Was it before the General Paper Company was organized?

A. Yes sir.

Q. What proposition, if any, was made to the Manufacturers Paper Company at that meeting?

Objected to as incompetent, irrelevant and immaterial, and *res inter alia acta*.

A. We had the production of seven of the western mills. It was proposed to increase that production with other print mills, by making contracts with other print mills.

Q. Go on and state what was said by the gentlemen and the substance of it.

Same objection.

A. Well, it is a rather difficult thing to say.

Q. Give us the substance.

A. They were all talking at different times, and the fact of
656 the matter is that the Manufacturers Paper Company had handled the production of seven of the western mills successfully for two and a half or three years; in fact one or two of the mills for considerably longer, and it was thought wise to increase its production by taking on the production of several of the larger print mills in the West.

Q. What mills at that time were you handling the product of?

Same objection.

A. The Centralia Pulp and Water Power Company; the John Edwards Manufacturing Company; the Grand Rapids Pulp and Paper Company; the Combined Locks Paper Company; the Tomahawk Paper Company, and part of the production of the Flambeau Paper Company, then the Park Falls mill, I believe.

Q. Where were these mills situated, in what valley, as it is called?

A. Most of them, with the exception of the Combined Locks Paper Company, in the Wisconsin River valley.

Q. There were other large mills, were there not?

A. Yes sir.

Q. Where were they situated?

A. In the Wisconsin River valley and the Fox River valley.

Q. What were those large mills that you had nothing to do with?

A. The Kimberly and Clark, the Wisconsin River Paper and Pulp Company. I can't remember all the mills up there in the Fox River valley. The Dells Paper and Pulp Company; Marinette and Menominee—

Q. Grand Rapids Pulp and Paper Company?

657 A. I had handled the Grand Rapids Pulp and Paper Company and the Nekoosa Company, but at the time I speak of both of those mills had withdrawn their production from us.

Q. Both of them had?

A. Yes sir.

Q. Why?

Objected to as incompetent, irrelevant and immaterial.

A. I do not know.

Q. They had both withdrawn their production. C. W. Howard and Company?

A. Had nothing to do with them whatever.

Q. Well, I know, but name the other mills that you had nothing to do with. What of the other mills was it proposed to add to your tonnage by the gentlemen present?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and leading; assuming a fact not proven in the case.

A. It was proposed to return to a contract basis with the Nekoosa Paper Company, the Grand Rapids Pulp and Paper Company, the Wisconsin River Paper and Pulp Company, and the Kimberly mills making print paper.

Q. What others?

A. I don't remember any others.

Q. The Dells Paper and Pulp Company?

A. I think not.

Q. Combined Locks Paper Company?

A. That was already with us.

Q. C. W. Howard and Company?

A. No sir, the C. W. Howard Company was making fibre, exclusively, and this was mills exclusively manufacturing print paper.

Q. Please state what was said to you about a proposition
658 by the gentlemen present, what proposition they made, and what you said.

Same objection.

A. Well—

Q. The substance of it.

A. The general idea and the general proposition was that competition had been so severe east and west that very severe commercial abuses had crept into the business which were ruining the business, ruining the mills both east and west, and if we could get sufficient tonnage to control the situation to a certain extent on the large contracts we could control and stop the abuses. And naturally go to maintain prices.

Mr. FLANDERS: That is objected to for the reasons stated.

Q. To maintain prices?

A. To a certain extent.

Q. What was the proposition about your company acting?

Same objection by defendants.

A. Proposed to make a five year contract with our company to handle the production.

Q. Any conditions?

Same objection.

A. The conditions that controlled the contracts we had with the other mills we were then selling for. We would handle their production on a commission basis.

Q. What commission were you to have?

A. Three per cent.

Mr. FLANDERS: Same objection.

659 Q. Were there any other conditions stated?

Same objection.

A. I don't know what you mean. There may have been.

Q. As a condition of making your company their selling agent?

Same objection.

A. That was naturally the proposition under the contract.

Q. You were to be the exclusive selling agent?

A. Exclusive, because we didn't take the production of a mill unless we were exclusive. That has been our business since 1884.

Q. Did you accept the proposition?

Objected to as incompetent, irrelevant, immaterial and leading.

Q. Please state all that was said and done as nearly as you can recollect. I don't want to keep asking you questions, but I would like to have you state it fully.

A. I suppose you will get it out of me anyway.

Mr. FROST: I don't want to interpose, Mr. Kellogg, but it looks to me as though perhaps a lot of mystery is being thrown around an ordinary affair of the Manufacturers Paper Company, and the witness probably should state what were the conditions that had prevailed down here while the witness was out trying to get additional tonnage.

Mr. KELLOGG: I am not asking—

660 Mr. FROST: I know you are not, but I think in fairness to the witness he should be permitted to state the conditions.

He was not trying to build up a combination, but he was trying to get additional tonnage.

Mr. KELLOGG: I am not charging him with it at all, I am asking him what conditions these gentlemen demanded of him as a condition of his being made the exclusive selling agent.

WITNESS: Well, their principal demand, Mr. Kellogg, was that we would keep their mills supplied with orders at reasonable prices.

Q. Was there any other demand?

Same objection.

(No answer.)

Q. Well, did you make an agreement with them?

Same objection.

A. We did not.

Q. Why not?

Same objections by defendants.

A. Conditions arose that prevented it.

Q. What were the conditions?

Same objection.

A. I don't know precisely what conditions they were, but the final terms became unsatisfactory.

Q. What were the final terms that they demanded?

Same objection and as assuming something not testified to.

(No answer.)

061 Q. Answer the question, Mr. Brockelbank?

A. Final terms as to what, Mr. Kellogg?

Q. As a condition of making contracts with you.

Same objection.

A. It had been suggested that some of the Western mill owners should hold stock in the Manufacturers Paper Company and possibly have a representative on the board of directors.

Q. What was said about that?

Same objection.

A. And that was practically agreed to.

Mr. FLANDERS: I move to strike that out as a conclusion of the witness.

Q. Did you agree to it?

Same objection, calling for the opinion of the witness.

A. I had no right to agree to it.

Q. Well, did Mr. Fullerton, in your presence?

Same objection.

A. Yes sir.

Q. What did he agree to give them?

Same objection.

Q. How much stock?

Same objection.

A. I believe 50 per cent. of stock and a number of the directors on the board.

Q. What did they demand of you?

Same objection.

662 A. I really don't know their actual demand.

Q. Well, what did they say to you?

Same objection.

A. At first they thought that was satisfactory.

Q. Well, go ahead, Mr. Brockelbank.

A. And then I believe the proposition was made that we declined to accept.

Q. What was the proposition that you declined to accept?

Same objection.

A. I don't remember that proposition in all its details.

Q. Well, how much stock did they demand of you?

Mr. FLANDERS: Same objection and as assuming something not shown by the record.

Mr. FROST: Was the proposition in writing?

WITNESS: I never saw it in writing.

Q. It was verbal, was it?

A. Yes sir.

Q. Made then and there at the meeting?

A. I believe so.

Q. In the presence of these gentlemen?

A. I think so.

Q. What amount of stock was then stated that they would demand?

Mr. FLANDERS: Same objection; assuming something not shown by the record.

A. Practical control of the stock.

Q. Control of the stock of the company. What did you say to that demand?

Mr. FLANDERS: Same objection; incompetent, irrelevant and immaterial.

A. We declined to continue negotiations.

663 Q. What did they say then?

Same objection.

A. We withdrew from the meeting.

Q. What is that?

A. We withdrew from the meeting.

Q. Was there anything said about their organizing another selling company?

Same objection.

A. I don't remember.

Q. Now, Mr. Brockelbank, was it not stated there, by men present, in substance, that if you did not accede to their demand they would organize a selling company of their own?

Mr. FLANDERS: That is objected to for all the reasons stated, and as leading and suggestive, putting in the mouth of the witness the answer which the counsel desires.

A. Such a statement might have been made; I don't remember.

Q. Was not the substance of that statement made?

Same objection by defendants.

(No answer.)

Q. Wasn't the substance of that statement made?

A. Well, it was practically understood between Mr. Fullerton and myself that if we didn't accept the proposition there might be such action taken by the western mills.

Mr. FLANDERS: I move to strike out the answer for all the reasons stated, and as not responsive to the question.

Q. Did you obtain that understanding from what was said then and there?

664 Mr. FLANDERS: Objected to as irrelevant, incompetent, immaterial and leading; putting in the mouth of the witness the answer that the counsel desires.

A. To the best of my knowledge and belief we did.

Q. By these other gentlemen present?

Same objection.

A. Yes sir.

Q. And that is your recollection of the substance of what was said, is it?

A. Yes sir.

Same objection by defendants.

WITNESS: But we didn't believe they would ever carry it through.

Q. Well, they did, didn't they?

A. Apparently.

Q. Now, you said something about their eliminating the abuses that had grown up by competition, that were talked about at that meeting.

A. Yes.

Q. Did you?

A. Yes.

Q. Now state the substance of what was said by these gentlemen about that subject.

Same objection.

Q. Give us the substance, Mr. Brockelbank.

A. The substance of what?

Q. Of what was said by these gentlemen about eliminating these abuses in the trade.

A. Well, it went without saying that if—

Q. No, I don't want what went without saying. State the substance of what was discussed there by these gentlemen.

665 Same objection.

A. The substance of the talk in regard to stopping the abuses was that if the Manufacturers Paper Company held the control of the majority of the print tonnage in the West they could make such contracts as to eliminate the abuses.

Q. Did the parties present at that meeting represent the majority of print tonnage west of Chicago?

Same objection.

A. I couldn't answer that question.

Q. What is your opinion?

Mr. FLANDERS: Objected to for the same reasons.

A. Practically the majority of the producers of print in the West.

Q. State the substance of what was said about those abuses and what they were.

Same objection.

A. Well, there were a thousand and one abuses that crept in.

Q. Well, name them.

Same objection.

Q. In the first place, the buyer compelling the mill to sell on production basis.

Q. Explain what that is.

A. A sheet of paper $35\frac{1}{2}$ x 47 inches will make an eight-page paper, and a thousand eight-page papers are two reams of paper of 500 sheets each. Going on the ream weight they compelled a mill to make a roll of paper on a certain basis of weight that should produce so many thousand copies. It does not produce so many
666 thousand copies; hence you have run your paper overweight, and we will pay you for what you bill us, which is robbery.

Q. The way that was, the way paper was made to produce those number of sheets, was to make light paper, wasn't it?

Mr. FLANDERS : Objected to as incompetent, irrelevant and immaterial—for the same reasons.

A. Yes sir.

Q. Name the others. That is one of them.

Same objection.

A. The return of white waste, when the manufacturer had no control over the amount of waste that would be made in the press-room.

Q. Had it been customary to return it?

A. It had been customary to return it.

A. Prior to that time?

A. Prior to that time.

Q. Now, what was it customary to allow for it?

Same objection.

A. Different mills had different usages, according to the terms of sale.

Q. Generally what price was allowed back to the purchaser of the paper?

Same objection.

A. Some mills sold their paper f. o. b. the mill and took none back at any prices; and others, under fierce competition, decided to make tonnage contracts, sidewalk delivery, and take back white waste at original price.

Q. And taking back white waste at original price was the abuse you referred to?

A. The abuse I referred to.

Q. Expensive to the mill, was it?

A. Yes, very.

Q. What else?

Same objection.

A. Frequent rejection of a car of paper on the plea that it was not up to quality.

Q. Go ahead.

A. And the mill had to stand the rejection, or get the buyer to use the car up at a lower price.

667 Q. What else?

A. And the mill frequently having no redress.

Q. Why didn't it have redress?

Same objection.

Q. It could refuse to do it, couldn't it?

A. Yes, they could refuse to do it and let a car stand there and rot or pay storage on it or pay freight back to the mill.

Q. What other abuse do you refer to?

A. Selling paper on thirty days' time and settling in ninety days without any reason.

Q. Cartage any of them?

A. No, there was no abuse of cartage. That was in the mill's own hands.

Q. Low price of paper one of them?

A. Extremely low price of paper under competition.

Q. Now all of these abuses were the result of competition, were they not?

A. Yes sir.

Q. Extreme competition?

A. Well, not altogether, no.

Q. Will you tell me how these gentlemen proposed to eliminate these abuses and eliminate competition?

Mr. FLANDERS: That is objected to for all the reasons stated and assuming something that the witness has not testified to. The witness has not testified they proposed to eliminate competition. You said that.

Q. Well, please answer the question, Mr. Brocklebank.

Mr. FLANDERS: Now I assume the counsel knows how to ask a question, and I assume that he knows that the proper way to ask a question is to ask the witness what was said and done.

Q. Well, state the substance of what was said by these gentlemen about eliminating these abuses and how it was to be done.

668 Mr. FLANDERS: That is objected to for the same reasons.

A. It was suggested that if the proportionate amount of the tonnage to the print in the West was put in the hands of the Manufacturers' Paper Company that these abuses could be gradually stopped.

Q. Why?

Same objection.

A. Because they declined to make a contract except upon proper basis.

Q. Was it then and there said that by putting their product in the hands of one company, the Manufacturers' Paper Company, you could eliminate these abuses by eliminating the competition?

Mr. FLANDERS: Now wait just a minute: That is objected to as leading and suggestive and improper, in view of the fact that the witness has not been allowed by the counsel to state what was said and done there, but as soon as he begins to give his recollection of the conversation the counsel resumes his leading and suggestive questions, and puts the answer in the witness' mouth.

Q. Please answer the question, Mr. Brocklebank.

A. It wasn't a question of eliminating competition; they couldn't

hope to do that, because there were a number of print producers, but it would be encouraging to other print producers. Rather than have Tom, Dick and Harry and half a dozen mills selling paper and being weak-kneed, if the tonnage was congregated in one hand it would go a long way towards stopping the abuses.

Q. Well, state whether it was said there that it would eliminate competition to that extent?

669 Objected to for the same reasons; the counsel declines in effect to allow the witness to give his recollection of what was said, but puts the answer in the witness' mouth repeatedly and against objection.

A. As a commission house having done business since 1884, every new mill they got on their books eliminated competition to that extent.

Q. Well, that is it.

Mr. FLANDERS: I move to strike that answer out as a conclusion.

Q. And what was said there about eliminating competition to any extent, Mr. Brocklebank?

Same objection.

A. I couldn't answer that question, Mr. Kellogg.

Q. Well, the substance of what was said.

Same objection.

A. It would eliminate competition in proportion to the tonnage that they controlled.

Q. That is it. And to the extent the competition was eliminated you could correct these abuses?

Same objection.

A. Certainly.

Q. And wasn't that the substance of the conversation by these gentlemen?

Same objection.

A. To a very large extent.

Q. Did you have any meeting with them after this?

Same objection.

A. I don't remember.

670 Q. Do you recollect any before the General Paper Company was organized May 26, 1900?

A. I met the several mill owners separately and individually.

Q. No, I mean at a meeting.

A. I don't remember, Mr. Kellogg.

Q. Previous to this meeting had you had preliminary conferences with these gentlemen?

Same objection.

A. I may have.

Q. Well, what is your recollection on the subject?

Same objection.

A. As the several mill owners for whom we were selling paper were in my office, off and on I had frequent conferences with them individually.

Q. What is your recollection as to about the time of this final meeting at which you refused their offer that you have been talking about? Give us your best recollection on that.

Same objection.

A. I can't remember that that was—I can't remember, Mr. Kellogg.

Q. Well, Mr. Fullerton was here, wasn't he?

A. Yes sir.

Q. Where does he live?

A. In New York city.

Q. Have you any memoranda or books that will show when he was here?

A. I might have.

Q. From which you can locate as near as possible the time of that meeting?

A. I possibly could do so.

Q. Will you try and do it?

A. I will.

Q. Now state what your best recollection is as to the time of that meeting.

A. I am very strongly of the impression, strongly impressed
671 with the fact, that it was in the winter months of 1899, and yet it appears to me later than that,—in the early spring of 1900.

Q. Winter of 1899 and 1900 you mean?

A. Yes sir.

Q. Then you think it was either in the winter of 1899 and 1900 or in the spring of 1900?

A. In the spring of 1900, yes.

Q. How long after that meeting did you hear of the General Paper Company being organized?

A. Several months after that.

Q. Well, after it was organized these concerns, as you have been explaining,—these companies which you had been selling for went into that company, didn't they?

A. Yes sir.

Q. And you lost the tonnage, except as you have explained here before.

Mr. FLANDERS: That is objected to for all the reasons hereinbefore stated.

A. Yes sir.

Q. Have you ever been able to get any other tonnage from those mills?

Objected to for all the reasons hereinbefore stated.

A. Yes sir.

Q. I mean other than you have explained.

Same objection.

Q. Renewal of your contracts.

A. Yes sir.

Q. Tonnage that was covered by these contracts with the General Paper Company, I mean.

A. No.

Same objection and leading and suggestive.

Q. That is what I am talking about. I am talking about the paper that was covered by these contracts with the General Paper Company.

672 Mr. FLANDERS: It is not shown that the witness knows anything about those contracts.

Q. I am referring to the contracts by which these companies made the General Paper Company their exclusive selling agent.

Mr. FLANDERS: Have you seen those contracts?

WITNESS: I don't know anything about those contracts.

Mr. KELLOGG: Well, then I will withdraw the question.

Q. You have named certain mills of which the General Paper Company is the selling agent, I believe, in your testimony, have you not?

A. I believe so.

Q. Now is there any competition between those mills of which the General Paper Company is the exclusive selling agent for the kinds of paper that it is the selling agent for?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, leading and suggestive and calling for the opinion of the witness.

A. I sincerely hope not.

Mr. FLANDERS: I move to strike the answer out.

Q. Well, is there?

Same objection.

A. I have no knowledge.

Q. Well, you are well posted in the trade, are you not, Mr. Brocklebank?

A. I ought to be.

Q. Do you know of any such thing as competition between mills having the same selling agent just as you have been describing here?

A. I never heard of it, no.

Mr. FLANDERS: I move to strike that out.

Q. Is there any practical competition between these mills that have made the General Paper Company their exclusive selling agent?

A. Not to my knowledge.

Mr. FLANDERS: I move to strike that out.

673 Q. You have knowledge of the trade, haven't you?

Same objection.

A. To a certain extent.

Q. State whether you keep yourself posted as to the condition of the trade in the West.

Same objection and as leading.

A. I try to.

Q. State whether those abuses that you have mentioned have been generally eliminated in this territory.

Objected to for the same reasons and as leading and suggestive.

A. As far as my knowledge is concerned they have.

Q. State whether the General Paper Company has been instrumental in eliminating them.

Same objection and calling for the opinion of the witness.

A. As far as my knowledge goes I believe they have.

Q. State whether any of the mills for which the Manufacturers' Paper Company is selling agent have any interest in it.

Mr. FLANDERS: In what?

Mr. KELLOGG: The Manufacturers' Paper Company; any of these western mills, I mean.

Mr. FLANDERS: That is objected to for all the reasons hereinbefore stated.

A. Not a dollar.

Q. Prior to the organization of the General Paper Company what was the principal selling agent west of Chicago?

Same objection and calling for the opinion of the witness.

674 A. Individual mills, Manufacturers' Paper Company, individual eastern mills and International Paper Company.

Q. Prior to the time of the organization of the General Paper Company how did these western mills which you have been enumerating here mostly sell their product?

Objected to as irrelevant, incompetent and immaterial.

Q. I will add to that: Exclusive I mean of the ones you were agent for.

Same objection.

A. Sold as individual mills, I believe.

Q. Up to the time of the organization and commencement of business of the General Paper Company, was competition very keen?

Same objection, and as leading, and calling for the opinion of the witness on a subject he is not competent to testify about.

A. Quite keen.

Q. Those contracts that you have testified which you renewed with these mills through the General Paper Company, what form of contract did you use?

Objected to as irrelevant, incompetent and immaterial.

A. I make a contract with my customers direct on the form of contract of the Manufacturers' Paper Company.

Q. Did you use for any of those renewal contracts the forms of the General Paper Company?

Mr. FLANDERS: That is objected to for the same reasons and on the ground that the contracts are the best evidence of their contents.

A. I did not.

Hearing was here adjourned until the morning of May 25 at eleven o'clock.

675

James G. Flanders, Volume 10.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of J. C. Brocklebank.

7th Day, May 25, '05.

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ROBERT S. TAYLOR,
 Special Examiner.

THURSDAY, May 25, 1905.

313 Federal building, Milwaukee, Wisconsin.

The witness J. C. BROCKLEBANK was recalled.

Cross-examination.

By Mr. FLANDERS:

Q. Did you say yesterday when you went with the Manufacturers' Paper Company?

A. I did.

Q. 1884 or 1885, was it, or when?

A. March 1, 1889.

A. And had charge of the Chicago office, did you, since that time?

A. Yes sir.

Q. And practically as their western representative?

A. Yes sir.

Q. I suppose that naturally during that time you transacted a good deal of business, had a good many things to remember and think about?

A. A great many things.

Q. And as to these matters that you testified about that your recollection is not distinct as to the details and facts in relation to them?

A. Well, as to that, I was doing a very large business and all the details of the business went through my hands, and on the main points I would be apt to have a pretty clear recollection, although five years ago is a long time for a man to remember.

Q. Have you testified to more than one meeting in relation to an attempted arrangement with the Manufacturers' Paper Company?

A. I think not.

Q. And what is the fact as to whether you can tell us what was said and done at that meeting, or do you have a sufficiently clear recollection to detail what was said and who it was said by at that meeting?

A. Well, I could not give you word for word the details of who made any special remarks; that would be impossible.

677 Q. As a matter of fact you are only giving more your conclusions or inference from what was said and done at that time, are you not?

A. The statements I made yesterday were best of my remembrance of the result and the gist of the entire talk.

Q. And as to your inference what that meeting meant, your conclusions of that meeting and its results?

A. To a certain extent.

Q. Now, Mr. Brocklebank, you have said something about a memorandum.

Mr. FLANDERS: Have you got that here, Mr. Kellogg?

A. I haven't got it; have you got it, Mr. Taylor?

Petitioner's Exhibit 138 was produced.

Mr. FLANDERS: It is admitted by counsel upon the other side that this is not an original of any memorandum but that it is a copy.

Q. You heard him make that admission, didn't you, yesterday?

A. I did.

Mr. FLANDERS: As I understand you, Mr. Kellogg, that is your position in regard to it?

Mr. KELLOGG: I think that is a copy, yes sir.

Q. Now then, Mr. Brocklebank, I think you also said that your copy of the original had been destroyed; did you say that?

A. I did.

Q. Now by whom was that memorandum—if there ever was one—by whom was it prepared?

A. I cannot say of my own knowledge.

Q. Did you ever have the original in your possession?

A. I do not think so.

Q. Did you have the original of any memorandum similar to that in your possession at any time?

678 A. As the memorandum I saw was in typewriting, it is utterly impossible for me to tell whether it was the original or a copy.

Q. Well, the one that you saw was in typewriting?

A. In typewriting.

Q. But it is admitted by counsel that this is not the one.

A. Yes.

The following question was read: "Did you have the original of any memorandum similar to that in your possession at any time?"

Q. Now assuming that so far as you were concerned that the typewritten copy which you saw,—assuming for the purposes of this question that that was an original, did you have that memorandum in your possession?

A. I did.

Q. Where?

A. At my office in Chicago.

Q. How long did you have it in your possession there?

A. Possibly a few hours.

Q. Is that typewritten memorandum the one that you destroyed that you had in your office?

A. I couldn't tell you.

Q. Well, what was it you destroyed,—a typewritten memorandum?

A. A typewritten memorandum that came back from New York with corrections.

Q. Came back from New York; from the home office of the Manufacturers' Paper Company?

A. The home office of the Manufacturers' Paper Company?

Q. And when was it that you destroyed that; about when?

A. Oh, it might have been two or three months, or six months or a year afterwards.

Q. Now then, you said yesterday that this suggested arrangement was discussed, but never carried out.

679 A. Yes sir, in all its details.

Q. Prior to the date of this memorandum, you had been filling orders of customers of the Manufacturers' Paper Company, had you not?

A. I had.

Q. And filling them with the product of some of the mills which had made contracts with the General Paper Company, hadn't you?

A. Yes sir.

Q. And some of those orders were filled by the General Paper Company at your request, were they not?

A. Yes sir.

Q. Before this memorandum was made at all?

A. Yes sir.

Q. And to what extent had that been going on, Mr. Brocklebank, prior to this date?

A. Practically to the extent of supplying the tonnage on a large proportion of my western contracts that I had originally placed at the western mills previous to the organization of the General Paper Company.

Q. And did you have contracts with the western mills to supply these orders, between the Manufacturers' Paper Company and the western mills?

A. We had had such a contract with several of those mills previous to the inception of the General Paper Company.

Q. Now then, those contracts expired, didn't they?

A. They had not expired.

Q. Well, not at that time, but they did expire.

A. They did eventually expire.

Q. And when did they expire with reference to the organization of the General Paper Company? About when?

A. They expired on notice being given of the withdrawal of tonnage under the contract.

Q. The western mills had a right to do that, did they?

A. The absolute right to do that, yes.

680 Q. Were those notices given right along after the organization of the General Paper Company?

A. About the same time, I should judge.

Q. And then the proper obligations of the western mills to supply this paper upon your orders terminated when that notice was given or when the notice prescribed expired, didn't—?

A. I didn't consider it so, so far as the tonnage was concerned which was under contract at the time the notice was served.

Q. Well, under contract between the Manufacturers' Paper Company and the customer.

A. And the individual mill and the customer.

Q. You mean between the Manufacturers' Paper Company and the customer, don't you?

A. And the individual mill.

Q. Well, but I understood you to say that under the contract with the individual mill the individual mill had the right to terminate by notice the obligation of the mill to fill these contracts between you and your customers?

A. Yes sir.

Q. That was right?

A. To clear the atmosphere, allow me to make a statement, Mr. Flanders.

Q. Well, I guess I would a little rather ask you the questions. My friend on the other side of the table seems to think I am pretty particular and perhaps I am. Now then you said that the individual mill as you understood it, had the right under the contract which it had with the Manufacturers' Paper Company, to terminate, by giving a notice, the obligation to supply paper to your customers.

A. So far as free tonnage was concerned.

Mr. KELLOGG: So far as what?

WITNESS: So far as free tonnage was concerned.

681 Mr. KELLOGG: What do you mean by "free tonnage"?

WITNESS: That paper which was not under contract to supply us on our contract with the customer.

Q. You mean by that, don't you Mr. Brocklebank, that you have had some arrangement or understanding with the different mills by which they were to supply you with tonnage but not at any specific price, something like that?

A. No sir.

Q. And not under any special contract?

A. I do not mean that.

Q. What do you mean by "free tonnage"?

A. I mean by "free tonnage" that the mill production which was not under contract accepted by the mills to supply to the termination of the contract.

Q. Well, under contract—

A. With the customer.

Q. Under a contract between the mill and the customer?

A. Yes sir.

Q. That is what you mean, is it?

A. I do.

Q. In other words, there were some instances in which there was a contract direct between the customer of the Manufacturers' Paper Company and the individual mill, is that right?

A. No, it is not right. If you will allow me to make the statement I will clear the atmosphere and without injury to anybody's case.

Q. Well, I don't know about anybody's being injured; mostly in relation to my being pleased, I guess.

A. Beg your pardon.

Q. The difficulty seems to be in relation to pleasing me, not as to injuring anybody.

A. I want to please you.

Q. Now don't argue it, Mr. Brocklebank, at all. But as I said before, our friend upon the other side thinks I am difficult to please and for the purposes of this case we will admit that I am. Now
682 then, is it the fact that in some instances the customer obtained by the Manufacturers' Paper Company entered into a contract himself with the individual mill that supplied him?

A. No direct contract, no sir.

Q. Well, a contract how? through the Manufacturers' Paper Company?

A. The Manufacturers' Paper Company made its contract with its customer.

Q. Yes.

A. The Manufacturers' Paper Company sent that contract to the individual mills and had their acceptance filed in that contract for the term of the contract, and became liable for that tonnage.

Q. Yes, in other words, the individual mill then made itself a party by accepting it——

A. Exactly.

Q. —to the contract between the Manufacturers' Paper Company and the customer obtained by the Manufacturers' Paper Company.

A. Exactly.

Q. Now then, as to those customers to which the individual mill had bound itself by the acceptance of your contract, you considered that the individual mill had no right to refuse to carry out that contract and supply the tonnage or to terminate it by notice, is that what you mean?

A. I do.

Q. Well, now then, the free tonnage was tonnage which the individual mill supplied at your request to other customers, to which customers the individual mill had not bound itself; is that right?

A. Correct.

Q. Now then, as to all that free tonnage, you did understand and do now that the individual mill had the right to terminate the obligation to furnish that free tonnage?

A. Absolutely.

Q. Now then, to what extent were you dealing with these individual mills or sending orders to these individual mills which
683 executed contracts with the General Paper Company for free tonnage, we will say before January 2, 1902.

A. Well, the proportion of the tonnage absorbed by my contracts was different with different mills.

Q. I know. I don't expect you to answer it exactly, Mr. Brocklebank, but answer it as nearly as you can: To what extent were you ordering free tonnage which the individual mills were not obligated by any written contract to supply?

A. I beg your pardon, I was not ordering any free tonnage.

Q. Well, you were supplying free tonnage then, or being supplied with free tonnage?

A. To the best of my recollection I was not at that time being supplied by any free tonnage.

Q. At what time?

A. From the organization of the General Paper Company up till 1902, which I understand is your question?

Q. You were not being supplied with any free tonnage?

A. I think not.

Q. Well, have you the means of ascertaining whether you were or were not, Mr. Brocklebank, in your office in Chicago?

A. I have, but it would be rather difficult to hunt it up.

Q. Well, passing that for the present, Mr. Brocklebank, you did place orders for tonnage of these individual mills with the General Paper Company, didn't you, after the organization of the General Paper Company?

A. Yes, practically.

Q. What?

A. Practically.

Q. What do you mean by "practically"?

A. I was placing contracts that I had always supplied from the mills that I had formerly supplied the contracts, and at the inception of the General Paper Company it was a matter of routine, the orders went through the hands of the General Paper Company, but was instructed to be sent to the mills formerly supplying the contracts.

684 Q. Do you now refer to free tonnage or to tonnage which you considered the individual mill was obligated to furnish?

A. I am referring almost wholly to contract tonnage.

Q. What do you mean by almost wholly?

A. It is barely possible that the mill holding the contract was incapacitated temporarily from supplying the specific tonnage, and some one of the other mills was requested to fill the tonnage, to fill the order.

Q. A request through the General Paper Company?

A. I presume so.

Q. Well, is that your recollection?

A. What do you mean? Is that my recollection of what?

Q. Well, you said you presumed so. Now we lawyers on this side of the table don't like the word "presumed." Our friends on the other side do.

A. Well, it is possible that the president of the mill formerly holding the tonnage might have made their request from a neighboring mill without the intervention of the General Paper Company. I don't know anything about that.

Q. I am not asking you to tell anything about something that you don't know about yourself just now, but I understood you to say a few moments ago that you did, in some instances at least, place

orders for free tonnage through the General Paper Company. Did I understand you correctly, before January 2, 1902?

A. I believe that is so.

Q. Well now then, to what extent did you do that business before January 2, 1902 and after the organization of the General Paper Company?

A. Rather difficult to state, but I should imagine a very small tonnage.

Q. Well, how frequently was it done?

685 A. As referring to the free tonnage? Very infrequently.

Q. Well, how many times will you say between May 28, 1900 and January 2, 1902, a period of about 19 months? Between July 5, 1900, because that is when it appears by the record that the General Paper Company began business. July 5, 1900 to January 2, 1902.

A. I cannot remember any specific instances.

Q. I am not asking you for any specific instances. I am asking you how frequently it occurred.

A. My answer would depend entirely on what you might consider free tonnage.

Mr. KELLOGG: Explain. I think the witness has a right to explain the answer. All I want is all the facts. I don't want to keep out anything at all.

Mr. FLANDERS: I might ask you, as you did me the other day, if you made that speech for the newspapers.

Mr. KELLOGG: No sir.

Mr. FLANDERS: Well then, it is improper, and I object to it for that reason.

Q. Now Mr. Brocklebank, was it or was it not the fact that between July 1900 and January 2, 1902, the Manufacturers' Paper Company was obligated to furnish tonnage to different customers which was not under a contract, to which the individual mill had made itself a party?

A. That is a fact.

Q. And what is the fact as to whether or not you procured that tonnage from the individual mills through the General Paper Company during the period named?

A. We purchased that tonnage, but it came from the mill with whom we formerly had a contract.

(The last question and answer were read.)

WITNESS: That is my answer.

686 Q. It don't strike me, with great respect to you, that is an answer to my question.

A. That is a very broad question, Mr. Flanders.

Q. It may be, that is my fault.

A. Going over a period of two years when there was a hundred

tons of paper a day being handled on my contracts, and you ask a very broad question of that kind, I think I know what you refer to.

Q. Well, if you do, be good enough to answer it then, because the question seems to me plain, and I will ask you Mr. Examiner, to read it to the witness again. If there is anything not plain about it to the best of my ability I will make it plain.

The question was read as follows:

And what is the fact as to whether or not you procured that tonnage from the individual mill through the General Paper Company during the period named?

A. The expression "that tonnage" means free tonnage, does it?

Mr. FLANDERS: Well, read back to him, because with some pains I tried to have that definite, that term "that tonnage." Read back the last three or four questions and answers to Mr. Brocklebank so he will have it in his mind.

The portion of the testimony indicated was read.

WITNESS: Now read my answer please.

Same read.

Q. Now, you see, Mr. Brocklebank, that my question is whether you procured that tonnage through the General Paper Company. I am not asking what mill it came from and for the present I don't care. I may care by and bye, but just now I want to know whether you procured that tonnage which you have explained through the General Paper Company.

A. I believe so.

687 Q. Now to what extent, during the period named, did you procure that tonnage through the General Paper Company?

A. To supply a certain contract, possibly during five months of the contract.

Q. Only one contract that you obtained a tonnage of that description from the General Paper Company in that period?

A. There was one particular contract fixed in my mind.

Q. To what extent did you procure, through the General Paper Company, the tonnage of the kind described on that contract, for example?

A. Possibly eight tons a day.

Q. And what five months was that?

A. The fall of 1900 and running into the spring of 1901.

Q. Now were there other instances in which you procured tonnage of that description through the General Paper Company in the period named, whether you have them in mind by name or not? Were there other instances?

A. There might have been.

Q. What is your recollection about it?

A. Oh, I procured considerable tonnage that might be called free tonnage in the fall of 1900.

Q. Through the General Paper Company?

A. The tonnage I have reference to was direct to the mills.

Q. Well, did the orders pass through the General Paper Company?

A. I gave the orders, in a number of instances, verbally, to the mill owners.

Q. Now, Mr. Brocklebank, will you be good enough to answer that question? If you will listen to it I think you will understand it. I didn't ask you whether in a number of instances the order went to the individual mill owner, but whether there are instances
688 in which the orders went through the General Paper Company; other instances than the one you have mentioned.

A. Yes.

Q. How many, about?

A. Oh, that is impossible to state.

Q. Well, according to your best recollection.

A. All this applying to free tonnage?

Q. I am not speaking of the tonnage which the individual mill was bound to supply to your customer by making itself a party to the contract. I am speaking of other tonnage than that.

A. In my judgment there was very little tonnage that was free tonnage obtained from the mills.

Q. Well, now, I dislike to be persistent, but that is a habit of my mind, and I will have to ask the reporter to read you my question, and respectfully ask you to answer it.

The last few questions and answers were read.

Q. Now, I call your attention to the fact that my question asks you how many instances there were in which orders for tonnage of the kind described went through the General Paper Company during the period named,—about.

A. You mean the number of tons, or in orders?

Q. Number of orders. How many instances, it says.

A. It would be very difficult to answer that question in the period of time you have designated.

Q. I don't ask you to give the exact amount, Mr. Brocklebank. Give your best recollection of it.

A. Well, there was considerable tonnage.

Q. I beg to remind you again that I didn't ask you just now—

A. A considerable number of orders, then, Mr. Flanders.

Q. About how many?

A. I couldn't state.

Q. Well, you can certainly give some idea as to whether it was two or a hundred, or a thousand, or a million.

689 A. Well, we will say two, then.

Q. I don't want you to say anything that you don't say as a witness on the stand. Give the best recollection you have on the subject.

A. Well, Mr. Flanders, you must understand in the volume of business that I was doing at that time it is utterly impossible for

me to state how many, whether it was a thousand, or two, or three, or five, or ten.

Q. Whether it was a thousand, or two thousand, or three thousand, or five thousand or ten thousand, do you mean?

A. A. The basis of my recollection is that nearly all of the tonnage, exclusively, was that which was under contract.

Q. Well, Mr. Brocklebank, I must bring you back again (with due respect) to my question, and I remind you again that I am not asking you to state the exact number of instances (I don't expect you to), but I ask you to give your best recollection. Now I assume that you do not mean to say, as a witness there, that you cannot tell whether it was a thousand or two thousand, or five thousand, or ten thousand instances, do you?

A. I mean to say that I cannot remember the exact number of orders or the number of cars.

Q. I am not asking you the exact number.

A. Nor approximately the exact number.

Q. Well, you have some recollection about it, haven't you? Was it a hundred instances?

A. I think not.

Q. Was it fifty?

A. I think not.

Q. Twenty-five?

A. I think not.

Q. Ten?

A. May possibly have been.

Q. May possibly have been ten?

A. Yes.

Q. Then your recollection would be that it was somewhere
690 between ten and twenty-five, would it?

A. Possibly.

Q. Well, is that your recollection?

A. Huh! I don't see what you are driving at.

Q. Well, it is not necessary that you should.

A. Well, I think it is, to answer intelligently.

Q. You are entitled to have the question so put that you can understand it, but what my purpose is in asking you a question, I think even counsel on the other side would agree is not material to you. At any rate, I shall ask you again whether I am to understand your testimony to me that the instances would be somewhere between ten and twenty-five in number.

A. Approximately.

Q. Now, we have got that. Now then, Mr. Bricklebank, can you tell us approximately how much tonnage there was that was represented by these tens and twenty-five instances in the period named?

A. I cannot.

Q. Well, you can give some idea about that, can't you?

A. I don't remember.

Q. Was it approximately fifty thousand tons?

A. I should judge not.

Q. Twenty-five thousand?

A. No sir.

Q. Fifteen thousand.

A. I should judge not.

Q. Ten thousand?

A. No.

Q. Nine?

A. No.

Q. Eight?

A. No.

Q. Seven?

A. No.

Q. Six?

A. I should judge not.

Q. Five?

A. I should judge not.

Q. Four?

A. I should judge not.

Q. Three?

A. I should judge not.

691 Q. Two?

A. I should judge not.

Q. Fifteen hundred?

A. It might possibly have been fifteen hundred.

Q. Is that your recollection?

A. It is not.

Q. Well, I beg you not to give anything that is not your recollection. It is not your recollection that it is approximately fifteen hundred tons?

A. It is not.

Q. Well, fourteen hundred?

A. I do not know.

Q. Ten hundred?

A. I would not hazard a guess.

Q. A hundred? I didn't ask you—I beg your pardon. Understand distinctly, I don't want any guesses, nor presumptions, nor possibilities. I want your recollection.

The last question was read.

WITNESS: A hundred tons?

Q. Yes, that is what I asked.

A. It is more than a hundred tons, yes sir.

Q. More than five hundred?

A. Yes sir.

Q. Somewhere between five hundred and a thousand, then?

A. Approximately.

Q. Well, we have got that. Now then, Mr. Brocklebank, I under-

stood you to say yesterday that the arrangement as stated in this Exhibit 138 was not carried out. That is right, isn't it?

A. In part.

Q. And that as a matter of fact you did close contracts with your customers after January 2, 1902, and informed the individual mills who had made contracts with the General Paper Company that if they did not supply the tonnage to fill your contracts with those customers that you would supply the tonnage from the eastern mills.

A. I believe so.

Q. That was right, wasn't it?

A. Yes sir.

692 Q. And after that had been done the tonnage for the contracts referred to was supplied by the individual mills as requested by you?

A. Yes, sir.

Q. And you also said, as I understood you, that you did not solicit orders, to any very large extent, of the customers in the western field, because you did not have the tonnage with which to fill those orders; was that correct?

A. Correct.

Q. You had a large trade in the eastern territory and in the territory tributary to the mills for which you were the selling agent, did you not?

A. Yes sir.

Q. Those mills for which your company was the agent practically didn't much more than supply the eastern trade, did they?

A. That is true.

Q. Now, Mr. Brockelbank, since January 2, 1905, you have been placing orders for the product of these western mills through the General Paper Company, have you not?

A. I have.

Q. And to what extent, if I may ask you?

A. To the extent of a majority of the contracts I formerly held.

Q. Notwithstanding the fact that those contracts have expired by limitation; is that right?

A. What contracts have expired?

Q. Contracts that you had with the customers to which the individual mills made themselves parties.

A. Yes sir.

Q. Those contracts have expired by limitation, haven't they?

A. Not as I look at it.

693 Q. Well, weren't they made for a definite period?

A. Yes sir.

Q. And has that period passed?

A. Yes sir.

Q. And do you consider those contracts in force after the date of the period named in them has passed?

A. Not unless I renew a specific contract for specific paper of the mill that had formerly held it.

Q. That is, a specific contract with the customer?

A. Yes sir.

Mr. FLANDERS: I don't want to discommode you, but I shall have to ask you, before you finish your examination to bring those contracts with you which you say were approved or entered into by the individual mills. You understand what I mean, don't you? The contracts between yourself and your customers which were approved in writing by the individual mill or to which the individual mill made itself a party. Now I may say to you that I don't care particularly about the terms of those contracts in so far as they affect prices, or anything of that kind; but I want to see at least the form of the contract which I understand you now to say you considered did not terminate by the period named in it; and with your permission I will say something to Mr. Frost, which may be helpful in the matter, as well as to yourself.

Mr. KELLOGG: I have no objections.

What Mr. Flanders said to Mr. Frost the examiner was instructed not to record.

694 Q. Now, Mr. Brockelbank, is it true that in terms these contracts between your company and the customer, to which the individual mills made themselves parties, have expired?

A. It is.

Q. And that legally the Manufacturers Paper Company under those contracts has no claim upon the individual mills which continue to supply that customer with tonnage?

A. It is.

Mr. FROST: Well, Mr. Flanders (if I may interrupt here), that is, so far as the terms of the contracts. We don't want any statement here to be any waiver of any legal right we may have. That is a conclusion on the part of the witness, and he may not be advised. The facts are that there are no such terms in the contracts; but whether we could enforce them legally or equitably is another thing. We claim we have that right.

Q. Well, then I will ask you to bring me the form of the contract. I don't care whether you bring it, or Mr. Frost does, although I might not want to suspend my cross-examination until I had seen it. Now, then, without waiving any rights which the Manufacturers Paper Company has, legal or equitable, you understood and do understand that the contracts with your customers to which the individual mills made themselves parties had expired, and that there was no legal claim upon those individual mills to supply the tonnage; is that right, Mr. Brockelbank?

A. That is correct.

Mr. KELLOGG: One moment. I want to suggest that if
695 those contracts are exhibited to you they should be exhibited to me.

Mr. FLANDERS: I suppose that went without saying.

Mr. KELLOGG: All right.

Mr. FLANDERS: My hand is open and above board. Anything that I get I expect to be produced to me here in the court room. I don't want it anywhere else.

Q. Now, then, Mr. Brockelbank, when, according to your recollection did these contracts by the terms expire? That is, when did the last of them expire, we will say? What do you say about that?

A. Well, that is one proposition. Under our contract with the individual mills, previous to the organization of the General Paper Company, we made contracts with the customer. We forwarded that identical contract to an individual mill for its acceptance. The terms of that contract may have run for one year, for two years, for five years. The individual mill accepted that contract and carried the contract out.

Q. Well that I understood you before. Had you finished your answer.

A. Yes.

Q. Well, I know, but it is more than five years. It is approximately five years since the General Paper Company began business. Now I ask you when the last of these contracts that you have reference to now, which were entered into by the individual mill,—when the last of them expired.

A. Well, approximately the last one expired the first day 696 of January, I believe, 1905.

Q. 1905?

A. Yes sir.

Q. And they have been expiring, different ones, at intervals between July, 1900 and January 1, 1905?

A. Yes sir.

Q. And those particular contracts have not in form been renewed, have they?

A. A number of them have.

Q. Well, are there any that are now——

A. As between the customer and the Manufacturers' Paper Company.

Q. Yes, I know, but in form renewed by assent of the individual mill.

A. The individual mill has accepted a number of contracts, through the General Paper Company.

Q. Well, they have not, in form, signed a renewal of the contract, have they?

A. Not to my knowledge.

Q. Well, you would be likely to know, if anybody did, wouldn't you?

A. That is the business of the General Paper Company.

Q. What?

A. That is the business of the General Paper Company.

Q. To sign a renewal of a contract between the Manufacturers' Paper Company and the individual mill?

A. No, you were speaking about the individual mill accepting the contract.

Q. Well, I think you didn't understand me, Mr. Brocklebank. I asked you whether in form the individual mill had signed a renewal of the contract which it became a party to, between yourself and your customer.

A. Not with us, no sir.

Q. What?

A. Not with us, no sir.

Q. So that, so far as the signature of the individual mill is concerned, and without waiving any equitable right, you have got against the individual mill, all these contracts to which the individual mill made itself a party expired before January 5, 1905?

097 A. Yes sir.

Q. And have not in form been renewed by the individual mill?

A. Not in form been renewed by the individual mill, no sir.

Q. Well, that is my question. And I say again, I don't want you to waive any rights you have got against anybody. That is not the purpose of my examination at all. And these contracts expired from time to time from July 1900 to January 1905?

A. Yes sir.

Q. And since the expiration of those contracts, you have been placing orders to supply your customers with the product of the individual mill through the General Paper Company, have you not?

A. Yes sir.

Q. Now that has been going on to a greater or less extent since January 2, 1902, has it not?

A. Yes sir.

Q. Now will you give us some idea of the extent to which you have been placing orders of that kind with the General Paper Company since January 2, 1902.

A. Well, in rough figures I should think it would be between about seventy and ninety tons a day.

Q. Averaging that would you think since January?

A. I should think so, yes.

Q. Now then, have you also placed orders with the General Paper Company for supplying other customers of the Manufacturers' Paper Company other than those that you have been describing?

A. One order.

Q. Only one?

A. I believe that is so.

Q. What order was that?

A. I must apologize.

Q. Well you needn't apologize to me.

A. That is not correct.

Q. You mean you want to correct your answer?

A. I want to correct my answer.

Q. Well, correct it as you see fit.

A. Possibly two or three orders have been placed with them other than that held by me for some years.

Q. Your company is dealing in manila and fibre papers, isn't it?

A. Yes sir.

Q. Where?

A. Chicago.

Q. And where else?

A. In the East.

Q. And where else?

A. Wherever we can sell it.

Q. And in the West?

A. In the West.

Q. And how far west?

A. To the Pacific coast.

Q. And making sales?

A. Making sales.

Q. West of Chicago?

A. Yes sir.

Q. Well, can you tell us to what extent you are supplying that territory with that kind of paper? Approximately? How much you are marketing there west of Chicago, we will say.

A. Probably ten or fifteen per cent. west of Chicago. The great mass of our tonnage of thirty-two tons a day is going southwest.

Q. Southwest?

A. Yes sir.

Q. What do you mean by "southwest," Mr. Brockbeank?

A. Where the heaviest demand is and the market.

Q. What territory do you mean?

A. Cincinnati, the biggest territory; St. Louis, where the largest demand for that kind of paper is.

Mr. KALLOGG: What grade of paper are you referring to? I don't understand.

WITNESS: Fibres and dry fibres, commonly called manila; water finished fibre papers.

Q. What amount of product of that class of paper do you market all told, say per year?

A. The capacity of our mill is thirty-two tons a day now.

Q. Well, is that approximately what the output is?

A. I say our output is thirty-two tons a day of one mill, our Muskegon mill.

Q. You said capacity.

A. Capacity and output is the same thing.

Q. I supposed the mill might not be run to its full capacity.

A. It would be a losing venture if it doesn't.

Q. Well, that may be. You mean output, at any rate?

A. Output, yes sir.

Q. Is that the mill that supplies the manila and fibre paper and the only mill?

A. Yes sir.

Q. And ten to fifteen per cent. of that you say is marketed west of Chicago, or more?

A. Possibly twenty or twenty-five per cent.

Q. And in that you don't include Cincinnati, of course.

A. No.

Q. And you sell it all the way through to the Pacific coast, more or less?

A. Yes sir, and in the East.

Q. And in Indianapolis and St. Louis, I suppose?

A. Yes sir.

Q. I think you said the mill was at Muskegon, Michigan, didn't you?

A. Yes sir.

Mr. FLANDERS: I don't want to call Mr. Brocklebank or Mr. Frost either of them back here, but I would like to reserve the right, after this testimony is written out, if I have overlooked anything, to ask Mr. Brocklebank to come back here and answer additional questions.

Mr. KELLOGG: There is no objection whatever, so far as we are concerned.

700 WITNESS: I am at your service, gentlemen. Of course I prefer not to come back, but as regards any of the contracts, you are perfectly welcome to them.

Mr. FLANDERS: Well, I don't know as we shall want anything further. I simply wanted, so that Mr. Kellogg would not misunderstand it, to reserve that right.

A recess was here taken until two o'clock p. m., at which time the hearing was resumed, and the witness was recalled.

Redirect examination.

By Mr. KELLOGG:

Q. I asked you yesterday to see if you had any letters which you sent to Mr. Fullerton which would locate the date of that meeting which you testified to.

Mr. FLANDERS: Which meeting do you refer to?

Mr. KELLOGG: I refer to the meeting where the subject of the inquiry, the control of your company by these gentlemen was discussed in Chicago.

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

Q. Have you had an opportunity to look and see?

A. I have not. I will explain, Mr. Kellogg, that I left on the

arrived
5:45 and left very late and had to go to the Annex, and I went to my office and the vault was locked; and secondly, some time ago

we had such a raft of that stuff that I packed it in a box and put it down in the cellar of the Rookery vault, up to 1893, I think it was.

Q. Now, I understood you to give me the substance of what was said between you gentlemen at that March meeting. Do you wish to change that, or is that still your understanding of your testimony.

701 Mr. FLANDERS: That is objected to as irrelevant, immaterial and incompetent, grossly leading and suggestive, and putting the answer in the witness' mouth.

WITNESS: Could I ask to have that answer read?

Q. I don't know where to find it. Did you give us the substance as you understood it?

A. To the best of my knowledge and ability.

Mr. FLANDERS: Now, Mr. Brocklebank, I must ask you to be good enough to let me put my objection on the record. That is all the privilege I have just now. Put it in, Mr. Examiner: Objected to as irrelevant, incompetent, immaterial and grossly leading, and the counsel states that the witness answered that question before the objection was allowed to be interposed, and I request the counsel for the Government to instruct the witness again to comply with my request and give me an opportunity to put my objections in before he answers.

Q. Referring to this memorandum—

Mr. FLANDERS: Now make a note that the counsel does not do it.

Mr. KELLOGG: Well, I am in no more control over this witness any more than you have, and I wish the witness to give you every opportunity you desire to make every objection you want.

Mr. FLANDERS: The trouble is, you put your question rapidly, as you have a right to, and the witness has repeatedly answered before my objection came in. Now I don't mean to say that he did that intentionally, but he is your witness and the instruction should come from you.

Mr. KELLOGG: Well, I am anxious the witness should give
702 you every opportunity.

Q. Now referring to this memorandum, Petitioner's Exhibit 138, who gave you the memorandum?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. I believe one of the officers of the General Paper Company.

Q. Well, which officer?

Same objection.

A. I think it was Mr. Stuart.

Q. When it was given you, was it in pencil, typewriting, or what form?

Mr. FLANDERS: That is objected to for the same reason and as leading.

A. To my best knowledge it was in typewriting with some annotations in pencil.

Q. In response to questions by Mr. Flanders you spoke about some contracts or a contract (I am not sure which) which were renewed before January 1902. Will you tell me what contract that was?

Same objection.

A. Well, as I was handling nearly one hundred tons per day production under contract, and probably sixty per cent. were expiring during the year 1901, it is a little difficult to enumerate them. I might enumerate one or two of them.

Q. Do you remember a contract by a Peoria newspaper?

Same objection.

A. Yes sir.

Q. When did that expire?

Mr. FLANDERS: That is objected to for the same reasons and on the ground that the contract is the best evidence.

703 A. That contract I had held for a number of years, and expired each year on January 1st.

Q. Then that would expire January 1, 1901?

A. Yes sir.

Q. Well, is that the first one that you recollect which expired after the General Paper Company was organized?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, leading and suggestive.

A. No sir, it is not.

Q. Well, did you have any conversation with Mr. Stuart about that contract?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, no proper foundation laid in the record, nothing that warrants the testimony of the witness on that subject.

A. I may have done so.

Mr. FLANDERS: I move to strike that out for all the reasons stated.

Q. What are the first conversations you had with Mr. Stuart about any contracts?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial and not within the issue and no proper foundation laid, nothing in the testimony to warrant evidence on that subject.

A. It would be very difficult for me to state, Mr. Kellogg, what particular contract.

Q. Did you have any conversations with Mr. Stuart prior to January, 1902?

Mr. FLANDERS: Same objections repeated.

A. I think I did, yes sir.

Q. Now can you state what they were in reference to these contracts or any of them?

704 Mr. FLANDERS: Same objection, on the ground specially that the proper foundation has not been laid.

A. In any conversation I may have had with Mr. Stuart, it was to the effect that the Manufacturers' Paper Company—

Mr. FLANDERS: Now I object to that.

Mr. KELLOGG: Now let him answer.

Mr. FLANDERS: No, I won't let him answer.

Mr. KELLOGG: Well, he is going to answer the question, whether you let him or not.

Mr. FLANDERS: He isn't going to answer the question without my objection.

Mr. KELLOGG: You have made three or four objections.

Mr. FLANDERS: I will make another, and I ask you to take it down. I object to the witness' undertaking to state the effect of any conversation as irrelevant, incompetent, immaterial and not proper, and I insist that he confine his testimony to what was said.

Q. Now proceed with your answer.

A. I stated to Mr. Stuart that the Manufacturers' Paper Company proposed to renew its contract with its old customers.

Q. What did Stuart say to you?

Mr. FLANDERS: That is objected to for the reason that the witness is not permitted to state the conversation and for all the reasons above stated.

Mr. KELLOGG: I have not said anything against his stating the conversation. I should be glad to have him state it.

Q. Go ahead.

A. Mr. Stuart wanted to know where we were going to get our paper to fill the contracts.

Q. Well.

705 A. I stated to him that if the western mills formerly holding the contracts wouldn't supply the paper we would place it from the eastern mill.

Q. Well, did you go to Mr. Stuart or did Mr. Stuart come to you?

Same objections.

A. I couldn't positively swear which took the action.

Q. How did the subject come up?

Same objection.

A. To the best of my recollection it came up through my taking the matter up with the president of the mill whose contract—whose tonnage I desired to hold.

Q. What is this Peoria contract that I mentioned.

Objected to as irrelevant, incompetent and immaterial.

A. Peoria Herald-Transcript.

Q. Who is the manager?

A. At that time Mr. H. M. Pindell.

Q. Did you state to Mr. Pindell that Mr. Stuart demanded that contract of you?

Objected to as irrelevant, incompetent, immaterial and hearsay.

A. I did not.

Q. Did he demand it of you?

Objected to as irrelevant, incompetent and immaterial.

A. He requested me to give him the contract after I had secured it.

Mr. FLANDERS: I move to strike that out as not responsive to the question and for all the reasons above stated.

Q. When was that?

Same objections.

A. I should judge it was in the fall of 1901.

Q. Please state the conversation between you and Mr. Stuart relative to that contract, the whole of it.

Mr. FLANDERS: That is objected to as irrelevant, immaterial, incompetent, no proper foundation laid, nothing in the evidence to warrant the witness' testifying on that subject.

A. To the best of my recollection, I stated to Mr. Stuart that as long as the Centralia mill, who had formerly held the contract, desired to supply the paper, we were willing that it should; we desired to obtain the tonnage from that mill as long as it was satisfactory to the customer.

Q. Now did Mr. Stuart come to you or did you go to him first about that matter?

Same objection.

A. I believe Mr. Stuart came to my office.

Q. What did he first say to you?

Same objections.

A. I couldn't say positively what he first said to me.

Q. Well, the substance of it, as near as you can recall.

Same objections.

A. It is a long time ago and very difficult to remember the conversation intact, except the results.

Q. Well, state as nearly as you recollect the substance of what he said when he came to you about this Peoria contract.

Same objection.

A. He said we had taken the contracts, and the contracts practically belonged to those mills and hence belonged to the General Paper Company. I told him I didn't view it in that light, and I would play fair with the Centralia Pulp and Power Company, that the contract belonged to them, and I proposed to send it to them.

Q. Well, have you stated all the conversation?

707 A. Practically of any consequence.

Q. What did you do then?

Same objection.

A. To the best of my recollection I tendered it to the president of the Centralia Pulp and Water Power Company.

Q. Did you get it back?

A. I practically got his acceptance of it.

Q. Through whom?

A. The General Paper Company.

Q. Now Mr. Brocklebank, have you today as many contracts with publishers being filled by any of these defendant mills as you had when the General Paper Company was organized?

Objected to as irrelevant, incompetent and immaterial, and grossly leading.

A. No sir.

Q. How many or what proportion, if any, have you lost?

Same objection.

A. I have lost several contracts.

Q. Who got them?

Same objection.

A. The General Paper Company got one, direct.

Q. Didn't they get them all?

Mr. FLANDERS: That is objected to for the same reasons and as leading.

A. No sir.

Q. Most of them, didn't they?

Same objection.

A. No sir.

Q. Well, the product which filled those contracts was afterwards sold by the General Paper Company, wasn't it?

708 Same objection and as leading.

A. I don't quite understand that.

Q. You didn't get the products that took the place of those contracts, did you, for sale?

Same objection and as leading.

A. No sir.

Q. The General Paper Company got it, didn't it?

Same objection.

A. I believe to a certain extent.

Q. The substance of the whole matter is that you were allowed to renew certain contracts with some of these defendant mills through the General Paper Company; is that correct?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and grossly leading.

A. That is correct.

Mr. FLANDERS: Might get him to swear what kind of a decree the court ought to enter in this case.

Mr. KELLOGG: The court will be able to do that.

Mr. FLANDERS: Oh, I don't think he will unless you put a witness on to testify to it.

Q. Prior to the organization of the General Paper Company what was the principal business of the Manufacturers' Paper Company?

Mr. FLANDERS: That is objected to for the same reasons, as irrelevant, incompetent and immaterial.

A. The handling of print paper on commission.

Q. Is it now its principal business?

Same objection and leading.

A. It is; and also fibres from our Muskegon mills.

Q. Did you handle fibres before the organization of the
709 General Paper Company?

A. The mill was not built.

Q. You did not handle fibres?

A. No sir.

Q. How did you happen to go into the fibre business?

Objected to as irrelevant, incompetent and immaterial.

A. A fibre man of Germany, whom Mr. Pogenstecher brought over to this country several years ago, to erect fibre plants or fibre mills (sulphite mills) for one of our mills, which mill was subsequently sold to the International Paper Company—and he looked about him to make an investment for himself and inveigled Mr.

Pogenstecher to take an interest in the mill to be built at Muskegon.

Q. Well, now, Mr. Brocklebank, you did not handle any fibre paper prior to the organization of the General Paper Company, did you?

A. No sir.

Q. Now then, as a matter of fact, isn't it true that you were compelled to go into the fibre paper company because the General Company had got control of all these mills?

Mr. FLANDERS: I object to that as irrelevant, incompetent, immaterial, grossly leading and calling for the opinion of the witness upon a subject in regard to which he is not competent to testify.

A. No sir.

Q. Is not that part of the reason?

Objected to as irrelevant, incompetent, immaterial and leading.

A. No sir.

Q. You say you are selling ten or fifteen per cent., possibly twenty-five per cent. of your product west of Chicago.

A. Yes sir.

710 Q. What kind of product?

A. Sulphite.

Q. I don't know what sulphite is.

A. Fibre papers; sulphite fibre papers.

Q. Sulphite fibre papers, not news print?

A. No.

Q. You don't sell much news print west of Chicago, except what you get from these mills, do you?

Objected to as irrelevant, incompetent, immaterial and leading.

A. No sir.

Q. Do you know Lucien Swift of the Minneapolis Journal?

A. I do.

Q. Since the organization of the General Paper Company have you refused to sell to him?

Objected to as irrelevant, incompetent and immaterial.

A. I don't remember that I have.

Q. Hasn't he applied to you to sell paper and you told him you couldn't do it?

Same objection.

A. Not in the last five years.

Q. Well, you did refuse Kellogg, of the Des Moines Daily News, or of the Kansas City paper.

Same objection.

A. As I stated, I did not refuse.

Q. Well, what did, you do?

Same objection.

A. I told him I could not supply it on account of my freight.

Q. Well, you didn't bid, did you?

A. I did not.

Q. What was the amusing incident you started to tell yesterday when you were shut off, about that?

711 Mr. FLANDERS: That is objected to for the reason that we are not trying the amusing characteristics of the witness in this case, and as irrelevant, incompetent and immaterial.

A. Well, Mr. Kellogg and I have been friends for a good many years, and I actually sold Mr. Kellogg his first paper when he started in Omaha; and he came to me for a renewal of contract, and I advanced price on him as I was forced to do under the condition of the market, and as he was a natural born kicker he kicked. He bought the paper, as he supposed, at a lower price, and when he wanted to renew his contract after that I was unable to sell him, not having eastern paper to sell.

Q. He bought of the General Paper Company, did he?

Objected to as irrelevant, incompetent and immaterial.

A. I don't know sir.

Q. Didn't you tell him he had better go right over and sign a contract with the General Paper Company?

Objected to for the same reasons and as leading.

A. I may have done so.

Mr. FLANDERS: I move to strike his answer out for the same reason.

Q. That you couldn't help him?

A. Yes sir.

Q. You know Mr. Ashbaugh, don't you, of the St. Paul Daily News?

A. Yes sir.

Q. He made application to you, after the organization of the General Paper Company to buy paper, didn't he?

Same objection and as leading.

A. I think not.

712 Q. Do you know Mr. Kelly of the Sioux City paper?

Same objection.

A. I do not.

Q. Hasn't the Sioux City Tribune, or Mr. Kelly for the Sioux City Tribune asked you in the last four or five years, since the organization of the General Paper Company, to sell paper to that company?

Objected to as irrelevant, incompetent, immaterial and leading.

A. I think not.

Q. Neff, of the Drovers' Journal, Kansas City?

Same objection.

A. He possibly may have written.

Mr. FLANDERS: I move to strike that answer out, for all the reasons stated, and on the further ground that the writing is the best evidence.

Q. Well, did you sell any to him?

Same objection.

A. I had a contract with Mr. Neff.

Q. Didn't you decline to sell him?

Objected to as incompetent, irrelevant, immaterial and leading.

A. I did not decline in the sense of declining.

Q. Well, you didn't sell him, did you?

Same objection.

713 A. No.

Q. Mr. Brockelbank, do you know the defendants, the mill corporations, for which the General Paper Company is selling agent?

A. I know most of them, sir.

Q. I show you a list printed at the end of Mr. Brown's testimony, page 404. Do you know the percentage, or about the percentage of the total output of roll print, manila and fibre paper manufactured by those mills, as compared with all the mills west of Chicago and east of the Rocky mountains?

Objected to as irrelevant, incompetent and immaterial.

Mr. FLANDERS: And I remind you, Mr. Witness, that that calls for what you know.

Q. Well, Minnesota, Wisconsin, and Michigan, then, I will make it: do you know?

Mr. FLANDERS: Not what you have heard or have been told, but what you know.

A. I could not answer that question, Mr. Kellogg.

Q. You can't answer?

A. No sir.

Q. Have you any means of informing yourself on that subject? Can you tell approximately?

Mr. FLANDERS: That is objected to unless the witness has knowledge on the subject, and for all the other reasons stated.

A. I could not do so. That is a very difficult proposition, Mr. Kellogg.

714 Recross-examination.

By Mr. FLANDERS :

Q. I call your attention to the following testimony given in answer to the counsel for the Government :

"Q. Now, Mr. Brockelbank, have you today as many contracts with publishers being filled by any of these defendant mills as you had when the General Paper Company was organized? A. No sir. Q. How many or what proportion, if any, have you lost? A. I have lost several contracts. Q. Who got them? A. The General Paper Company got one direct."

In that you refer to contracts between the Manufacturers Paper Company and the customer, don't you?

A. I do.

Q. Now, you say that the General Paper Company got one of those that you lost?

A. Yes sir.

Q. Who got the rest, and how many were there, that you lost?

A. The St. Regis Paper Company of New York State.

Q. Got one, did it?

A. Got three.

Q. Got three. And that St. Regis Paper Company got contracts with the Scripps-McRae League and the Scripps-Booth League, didn't it?

A. Yes sir.

Q. And what else?

A. Well, the Scripps-McRae League covered practically the Minneapolis, Omaha and the western business, and the Puget Sound business.

Q. The Scripps-McRae League is the proprietor of a string of fourteen or fifteen newspapers, or thereabouts, isn't it,—or more?

A. Yes sir.

715 Q. And the contract for the supply of that league is one of the largest, if not the largest, contracts for paper made by any customer, isn't it?

A. One of the largest.

Q. And the Scripps-Booth League controls a string of papers: how many, if you know, approximately?

A. Fifteen, probably.

Q. You mean the Scripps-Booth and the Scripps-McRae together control fifteen?

A. Yes sir, wholly that.

Q. And the contracts call for how many tons a day, about?

A. Combined I should say a hundred tons a day.

Q. And the St. Regis mill got that, you say?

A. Practically, yes sir.

Q. Well, now, then, what other ones did you lose?

A. I don't remember any being supplied by the western mill.

Q. The St. Regis mill is one of the mills in the International Paper Company, isn't it?

A. No sir.

Q. The Manufacturers Paper Company?

A. It was formerly.

Q. It was formerly. Well, up to what time?

A. Up to practically a year ago.

Q. And when was it they got this contract?

A. I couldn't tell you the precise date.

Q. About last January?

A. I think previous to that.

Q. Well, was it while it was in contract relations with the Manufacturers Company, or after it ceased to be?

A. While practically with contract relations with the Manufacturers Paper Company.

Q. Well, you also lost the Cincinnati Inquirer since the General Paper Company was organized, didn't you?

716 A. I couldn't advise you the exact date of that cancellation.

Q. I didn't ask you to give me the exact date.

The question was read.

A. Yes sir.

Q. And who got that?

A. The International Paper Company.

Q. Did you lose any paper contract in Louisville, Ky.?

A. No sir.

Q. Did you lose any other contracts besides these you have mentioned, with the Scripps-McRae and the Scripps-Booth League and the Cincinnati Inquirer, other than the one you say the General Paper Company got?

A. Yes sir.

Q. What was it?

A. The Ohio State Journal contract.

Q. That was since the General Paper Company was organized?

A. Yes sir.

Q. Who got that?

A. The Rhinelander Paper Company, afterward a member of the General Paper Company.

Q. But not in contract relations with the General Paper Company when it got it?

A. I believe not.

Q. What other one did you lose?

A. I can't remember of any.

Q. The Cleveland Plain Dealer?

A. No sir.

Q. Or the Cleveland Leader?

A. I can't speak of my own knowledge.

Q. Why not?

A. Not in my department. It belongs to the eastern territory.

Q. Well, has the fact been communicated to you by the
717 officers of the Manufacturers Paper Company?

A. Yes sir.

Q. They have told you that it was lost?

A. Yes sir.

Q. Who got that?

A. The International Paper Company.

Q. What other contract did you lose?

A. In what section of the country?

Q. In any section of the country?

A. Well, if you are going over a space of seven years and want to keep me here seven weeks I can tell you all about it. That is rather a broad question—on five millions a year business.

Q. Well, Mr. Brocklebank, you can tell us what you know about it at least.

A. I don't know where to begin.

Q. I don't care where you begin.

Mr. KELLOGG: You know those are not the contracts I asked you about. I asked you about the contracts that were being filled by these western mills. I don't know why you should go into his eastern business. I have no objection to his telling it if he wants to tell all his business.

WITNESS: I object to being questioned on the business of the Manufacturers Paper Company that is entirely irrelevant to this inquiry, and I protest to the examiner.

Q. Well, I will ask you then, generally, if since the organization of the General Paper Company you have lost a considerable number of contracts (without asking you to specify which they were) which were not obtained by the General Paper Company?

A. Yes sir.

718 Q. And can you tell us approximately how many there were?

A. No, I couldn't approximate it.

Q. No estimate of it at all?

A. It would be very difficult, because part were lost and part regained, and part lost and regained again, the last five or six years.

By Mr. KELLOGG:

Q. Now referring to this Scripps-McRae League contract which you claim you lost, that was taken, you say, by the St. Regis Paper Company?

A. Yes sir.

Q. That included Mr. Ashbaugh's St. Paul Daily News, didn't it? Objected to as incompetent, irrelevant and immaterial.

A. Yes sir.

Q. About when did Mr. Ashbaugh make that contract?

Mr. FLANDERS: Same objection; incompetent, irrelevant and immaterial.

Q. About when was it made, as nearly as you recollect?

Mr. FLANDERS: If you know.

A. Some time last fall.

Q. As a matter of fact who is furnishing the paper under that contract to Mr. Ashbaugh today?

Mr. FLANDERS: If you know.

A. I do not know.

Q. Don't you understand that the General Paper Company is furnishing it?

719 Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and hearsay; calls for your knowledge.

A. Of my own positive knowledge I do not know.

Q. Haven't you heard Mr. Ashbaugh say that he thought he was getting out from under the trust, but he finds the paper is being furnished by the General Paper Company?

A. I have not.

Q. Most of the papers of that Scripps-McRae League are east of Chicago, aren't they?

Mr. FLANDERS: That is objected to.

A. Of the Scripps-McRae, no sir.

Q. Well, a number of them are?

A. One or two.

Q. What papers are east of Chicago?

Same objection.

A. Of my knowledge, the Cleveland Press of the Scripps-McRae League; the Cincinnati Post, southeast of Chicago; and a Dayton paper—Dayton News I think it is.

Q. Aren't there some papers up in Michigan also, east of Chicago?

A. They are not, properly speaking, Scripps-McRae papers.

Q. They handle them, don't they?

A. No.

Q. Don't they buy the product for them?

A. Under this last contract and the previous contract, yes.

By Mr. FLANDERS:

Q. What knowledge have you of the contract of the St. Regis mill except what you have heard or been told? You never saw the contract, did you?

A. No sir.

720 Q. Have you any knowledge on that subject except what you have heard or been told by somebody?

A. No sir.

By Mr. KELLOGG :

Q. What have you been told about it?

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial and hearsay.

A. I have been told that it is one of the mysteries of the financial world, unsight and unseen. Ye gods!

(S'g'd)

JOHN C. BROCKLEBANK.

Subscribed and sworn to before me this 25th day of May, 1905.

(S'g'd)

ROBT S. TAYLOR,

Special Examiner.

By consent of all parties the hearing was adjourned until Wednesday, June 7, 1905, at 10 o'clock a. m., at Milwaukee, Wisconsin.

721 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }

vs.

GENERAL PAPER COMPANY ET AL., Defendants. }

EXHIBITS Nos. 1-25.

ROBERT S. TAYLOR,

Special Examiner.

Filed June 1, 1905.

EDW. KURTZ, Clerk.

722 PETITIONER'S EXHIBIT 1.

United States of America.

The State of Wisconsin, Department of State.

To all to whom these presents shall come :

I, W. L. HAUSER, secretary of state of the State of Wisconsin and keeper of the great seal thereof, do hereby certify that the annexed copy of articles of association and amendments thereto of the General Paper Company has been compared by me with the records on file in this department, and that the same is a true copy thereof, and of the whole of such records.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State at the capitol, in the city of Madison, this 11th day of May, A. D. 1905.

[Great Seal of the State of Wisconsin.]

W. L. HAUSER,

Secretary of State.

Articles of Association.

Know all men by these presents, that we, Thomas E. Nash, of Centralia, Wisconsin, George A. Whiting and William Z. Stuart, of Neenah, Wisconsin, all being adult persons and residents of the State of Wisconsin, do, for the purpose of forming a corporation under the laws of the State of Wisconsin, make, sign and acknowledge the following written articles, namely :

First. We, the aforesaid corporators, do hereby declare that we do associate for the purpose of forming a corporation under the Revised Statutes of the State of Wisconsin, the business or purpose of which is and shall be acting as sales agent for any and all kinds of paper and paper products and any and all merchandise manufactured from paper or paper products manufactured or produced by mills in the State of Wisconsin or elsewhere ; buying or leasing any and all real estate necessary or proper for the conduct of its business, including warehouses, and selling, leasing or sub-letting any and all real estate not necessary or proper for the conduct of its business ; and the transaction of any and all affairs or business, and the buying or selling of any and all kinds of property and the making of any or all contracts necessarily or properly connected with the general purposes of this corporation.

Second. The name of such corporation shall be General
724 Paper Company, and its location or principal office shall be at Milwaukee, in the county of Milwaukee and State of Wisconsin.

Third. The capital stock of said corporation shall be one hundred thousand dollars (\$100,000), which shall be divided into one thousand (1000) shares of one hundred dollars (\$100) each.

Fourth. The general officers of said corporation shall be a president, a first vice-president, a second vice-president, a secretary and a treasurer. There shall be seventeen directors, who shall each hold his office for one (1) year. Any vacancy in the board of directors, arising from death, resignation or other cause, shall and must be filled by the board of directors by the election of a successor, who shall hold his office until the next ensuing election. One person shall be eligible to hold the office of secretary and the office of treasurer.

Fifth. The principal duties of the president of said corporation shall be to preside at all meetings of the stockholders and directors ; to have the general oversight and charge of said company's business ; to be its chief executive officer ; in connection with the secretary to sign the certificates of stock and other sealed instruments or agreements to which said corporation is a party ; to make and sign contracts in its behalf when so authorized by the board of directors, and to perform such other duties as may be required
725 by the by-laws of said corporation or by the vote of the directors.

The principal duties of the first vice-president shall be, in case of the death, absence or disability of the president, to perform the duties of the president and such other duties as may be required by the by-laws of said corporation or by vote of the directors.

The principal duties of the second vice-president shall be in case of death, absence or disability of the president and of the first vice-president, to perform the duties of the president and such other duties as may be required by the by-laws of said corporation or by vote of the directors.

The principal duties of the secretary shall be to keep the record of all meetings of the stockholders and directors of said corporation; to have general charge and oversight of such correspondence of the company as is necessarily or properly conducted by the secretary, and to do and perform such other duties as may be required by the by-laws or by vote of the directors.

The principal duties of the treasurer of said corporation shall be to collect all moneys due the corporation and safely keep the same; to have the custody of the notes and other valuable papers of said corporation; to pay out the money thereof under the direction of the board of directors, and to perform such other duties as may be required by the by-laws of said corporation or by vote of the directors.

726 Sixth. All persons subscribing for stock and paying for the same under such conditions as may be prescribed by the incorporators or by the directors of said corporation when elected, shall be members thereof, and any stockholder shall cease to be a member of said corporation when he has transferred all his stock therein.

In witness whereof, we, the said incorporators, have hereunto set our hands and seals this 26th day of May, A. D. 1900.

THOMAS E. NASH.	[SEAL.]
GEO. A. WHITING.	[SEAL.]
W. Z. STUART.	[SEAL.]

Executed in presence of—

JAMES G. FLANDERS.
JOHN H. HURLEY.

STATE OF WISCONSIN, }
Milwaukee County, } ss:

Be it remembered, that on this 26th day of May A. D. 1900, personally appeared before me Thomas E. Nash, George A. Whiting and William Z. Stuart, to me known to be the persons described in and who executed the foregoing articles of association, and severally duly acknowledged the same.

JOHN H. HURLEY,
Notary Public, Milwaukee Co., Wisconsin.

STATE OF WISCONSIN, }
Milwaukee County, } ss:

727 Thomas E. Nash and William Z. Stuart, being duly sworn, does each for himself depose and say that he is one of the signers of the original articles of incorporation of General Paper Company dated the 26th day of May, A. D. 1900; that he has read the foregoing instrument, and that the same is a full, correct and true copy of the said original articles of incorporation of said General Paper Company.

THOMAS E. NASH.
W. Z. STUART.

Subscribed and sworn to before me this 26th day of May, A. D. 1900.

JOHN H. HURLEY,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, }
County of Milwaukee, } ss:

I, Henry A. Verges, register of deeds in and for said county, do hereby certify that the articles of association of the General Paper Company were recorded in my office on the 28th day of May A. D. 1900.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 28th day of May, A. D. 1900.

[SEAL.]

H. A. VERGES,
Register of Deeds, Milwaukee Co., Wis.

Ten cent revenue stamp cancelled.

728 STATE OF WISCONSIN, }
Department of State, } ss:

Received and filed this 31st day of May, A. D. 1900.

HY. P. SCHMIDT,
Assistant Secretary of State.

At the annual meeting of General Paper Company, held in the office of said company in the city of Milwaukee in the State of Wisconsin on the 8th day of December, A. D. 1903, the following resolution was adopted by the stockholders of the said General Paper Company, more than two-thirds of all the stock then outstanding voting in favor of said amendment.

Resolved, That the fourth paragraph of the articles of association of General Paper Company be, and hereby is, amended to read as follows:

"Fourth. The general officers of said corporation shall be a president, a vice-president, a second vice-president, a secretary and a treas-

urer. There shall be twenty-five directors who shall each hold his office for one year. Any vacancy in the board of directors, arising from death, resignation or other cause shall and must be filled by the board of directors by the election of a successor who shall hold his office until the next ensuing election. One person shall be
 729 eligible to hold the office of secretary and the office of treasurer."

STATE OF WISCONSIN, }
 County of Milwaukee, } ss :

I, J. A. Kimberly, president of General Paper Company, and Lewis M. Alexander, secretary of General Paper Company, hereby certify that the foregoing is a true and correct copy of the original resolution adopted at the annual meeting of General Paper Company, held in the offices of said company in the city of Milwaukee in the State of Wisconsin on the 8th day of December, A. D. 1903, and that such original resolution was on said 8th day of December, A. D. 1903, adopted by more than two-thirds of all the stock outstanding at the time of such annual meeting.

In witness whereof this certificate hath been signed by J. A. Kimberly, the president of General Paper Company, and Lewis M. Alexander secretary of General Paper Company, and the seal of said General Paper Company hereunto affixed this 8th day of December, A. D. 1903.

GENERAL PAPER COMPANY,
 By J. A. KIMBERLY, Its President.
 LEWIS M. ALEXANDER,
 Its Secretary.

[CORPORATE SEAL.]

STATE OF WISCONSIN, }
 Department of State, } ss :

Received and filed this 17th day of December, A. D. 1903.

JAMES A. STONE,
 Assistant Secretary of State.

730 At the annual meeting of General Paper Company, held in the offices of said company in the city of Milwaukee in the State of Wisconsin on the 9th day of December, A. D. 1902, the following resolution was adopted by the stockholders of said General Paper Company, more than two-thirds of all the stock then outstanding voting in favor of said amendment :

Resolved, That the fourth paragraph of the articles of association of General Paper Company be, and hereby is, amended to read as follows :

" Fourth. The general officers of said corporation shall be a president, a vice-president, a second vice-president a secretary and a treasurer. There shall be twenty-two directors who shall each hold

his office for one year. Any vacancy in the board of directors arising from death, resignation or other cause shall and must be filled by the board of directors by the election of a successor who shall hold his office until the next ensuing election. One person shall be eligible to hold the office of secretary and the office of treasurer."

STATE OF WISCONSIN, }
County of Milwaukee, } ss :

I, J. A. Kimberly, president of General Paper Company and Lewis M. Alexander, secretary of General Paper Company, hereby certify that the foregoing is a true and correct copy of the original resolution adopted at the annual meeting of General 731-897 Paper Company held in the offices of said company in the city of Milwaukee in the State of Wisconsin on the 9th day of December, A. D. 1902, and that such original resolution was on said 9th day of December, A. D. 1902, adopted by more than two-thirds of all the stock outstanding at the time of such annual meeting.

In witness whereof this certificate hath been signed by J. A. Kimberly, the president of General Paper Company, and Lewis M. Alexander, secretary of General Paper Company, and the seal of said General Paper Company hereunto affixed this 9th day of December, A. D. 1902.

GENERAL PAPER COMPANY,
By J. A. KIMBERLY, Its President.
L. M. ALEXANDER, Its Secretary.

[CORPORATE SEAL.]

STATE OF WISCONSIN, }
Department of State, } ss :

Received and filed this 13th day of Dec. A. D. 1902.

HY. P. SCHMIDT,
Assistant Secretary of State.

* * * * *

898

PETITIONER'S EXHIBIT 26.

UNITED STATES OF AMERICA,
 Eastern District of Wisconsin, } ss:

The President of the United States of America to L. M. Alexander, individually and as secretary and treasurer of General Paper Company, residing at Milwaukee, Wis.; George A. Whiting, individually and as vice-president of the General Paper Company, residing at Menasha, Wis.; J. A. Kimberly, individually and as president of General Paper Company, residing at Neenah, Wis.; W. Z. Stuart, individually and as second vice-president of the General Paper Company, residing at Chicago, Ill., and John A. Davis, individually and as general sales manager of the General Paper Company, residing at Chicago, Ill., Greeting:

You and each of you are hereby commanded that laying aside all business and excuses you and each of you be and appear in your proper persons before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room 314 Federal building, in the city of Milwaukee, and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the United States of America in the case of The United States of America vs. General Paper Company, The Itasca Paper Company, Hennepin Paper Company, Wolf River Paper and Fibre Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, The Petoskey Fibre Paper Company, and Rhinelander Paper Company, defendants.

And you and each of you are further required to bring with you and produce at the time and place aforesaid, the following books, papers and documents, to-wit:

All written contracts or agreements made and entered into by and between the above named defendant, General Paper Company, and any or all of the above named defendants in said cause, between the 1st day of May, 1900, and the present time, showing or in any way tending to show the terms and conditions upon which the said

900 defendant, General Paper Company, sells or controls, or in any way deals in or has sold or controlled, or in any way dealt in the product of the said other defendants or each or any of them, between the said 1st day of May, 1900, and the present time.

All stock books, stock ledgers and any and all other books of the said General Paper Company showing the ownership and distribution of the stock of said General Paper Company, from the time of its organization to the present time; and also all books or papers showing the manner and proportions in which the earnings of said defendant, General Paper Company, have from the time of its organization to the present time been divided and distributed.

Any and all books, written agreements or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, from the time of its organization to the present time, over the output of any or all of the other above named defendants, whether said control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said other defendants or any of them.

Any and all books, papers, documents and correspondence in the possession or under control of the said witnesses, either individually or as officers of the defendant, General Paper Company, relating to the manufacture of that certain grade of paper known as butchers' fibre, and particularly correspondence between the 900½ defendant, General Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wis., and now of the Rhinelander Paper Company, Rhinelander, Wis.; bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butchers' fibre.

Any and all correspondence—letter press copies, if any, of correspondence sent, as well as original letters or papers received—between the said defendant, General Paper Company, and each and all of the other defendants, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present time, sold or disposed of, and does sell or dispose of the product of the said other defendants; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made. And this you or either of you are not to omit under the penalty which may ensue.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Milwaukee, the 4th day of May, in the year of our Lord, one thousand nine hundred and five, and of the Independence of the United States the one hundred and twenty-ninth.

EDWARD KINTZ, Clerk.

901 Endorsed on back: "5197." (Title) "*Subpoena duces tecum*
for L. M. Alexander *et al.*"

"I have served the within write by reading the same to and within the presence and hearing of John A. Davis and W. Z. Stuart therein named, on the 12th day of May, 1905, at the same time delivering to each of them a true copy thereof.

JOHN C. AMES, U. S. Marshal,
By WILLIAM H. GRIFFITH, Deputy.

Marshal's Fees.

2 service-	1.00
1 mile.....	.06
	<hr/>
	\$1.06,"

902

PETITIONER'S EXHIBIT 27.

Being Stock Certificate Book of General Paper Company.

Page 1.

The certificate is removed, and the stub reads as follows :

Certificate.

No. 1.

For 125 Shares Issued to J. A. Kimberly.

Dated Dec. 31, 1901.

From Whom Transferred, — —.

Dated — —, 190—.

No. original
certificate.

No. original
shares.

No. of shares
transferred.

.....

.....

.....

Received certificate No. 1 for 125 shares this 23rd day of Jan.,
1902.

J. A. KIMBERLY.

903

Page 2.

Stub.

No. 2.

For 8½ Shares.

Issued to J. C. Kimberly.

Dated Dec. 31, 1901.

From Whom Transferred, — — —.

Dated — — —, 190—.

No. original
certificate.

.....

No. original
shares.

.....

No. of shares
transferred.

.....

Received certificate No. 2 for 2 shares this 23rd day of Jan., 1902.

JAMES C. KIMBERLY.

(Certificate re-attached to stub reads as follows :)

“ Incorporated under the Laws of the State of Wisconsin.

Number 2.

Shares, 8½.

General Paper Company.

Capital Stock, \$100,000.

This certifies that J. C. Kimberly is the owner of eight and ½ shares of one hundred dollars each of the capital stock of General Paper Company transferrable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender
904 of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers, and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

{ Seal General Paper Company, Milwaukee, Wisconsin, }
May, 1900.

Written across face of certificate: “Cancelled Nov. 30, 1903, and certificates No. 29 for 4½ shares to J. C. Kimberly and No. 30 for 4 shares to J. J. Sensenbrenner issued.”

On back of certificate: “Certificate for 8½ shares of the capital stock General Paper Company issued to — — —. Dated — — —.”

"For value received, I hereby sell, assign and transfer unto Kimberly & Clark Co. 8½ shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

"Dated Jan. 25, 1902.

JAMES C. KIMBERLY.

In presence of—

F. J. SENSENBRENNER.

"For value received we hereby sell assign & transfer unto 905 J. C. Kimberly and F. J. Sensenbrenner 8½ shares of the capital stock represented by within certificate and hereby constitute them to transfer the said stock on the books of the within named corporation.

Nov. 27, 1903.

KIMBERLY & CLARK CO.,
By H. BABCOCK, Treas.

Witness:

Z. L. GIDDINGS."

I. R. stamp cancelled 45 cts.

Page 3.

Stub: No. 3 for 5 shares issued to H. Babcock, dated Dec. 31, 1901.
Received certificate No. 3 for five shares this 23rd day of Jan., 1902.

H. BABCOCK,
By J. A. KIMBERLY.

Certificate removed.

Page 4.

Stub: No. 4. For 86½ shares issued to J. S. Van Nortwick. Dated Dec. 31, 1901. Received certificate No. 4 for 86½ shares this — day of — 190—.

J. S. VAN NORTWICK."

Certificate removed.

906

Page 5.

Stub: No. 5. For 37½ shares issued to C. W. Howard. Dated Dec. 31, 1901.

Received certificate No. 5 for 37½ shares this — day of — 190—. C. W. HOWARD.

Certificate removed.

Page 6.

Stub: No. 6. For 60 shares. Issued to L. M. Alexander. Dated December 31, 1901.

Received certificate No. 6 for 60 shares this 23rd day of Jan. 1902. L. M. ALEXANDER.

Certificate removed.

Page 7.

Stub: Certificate No. 7. For 97½ shares. Issued to T. E. Nash.
Dated December 31, 1901.

Received certificate No. 7 for 97½ shares this 23rd day of Jan. 1902.
T. E. NASH.

Certificate removed.

907

Page 8.

Stub: Certificate No. 8. For 33½ shares. Issued to F. Garrison.
Dated Dec. 31, 1901.

Received certificate No. 8 for 33½ shares this 23rd day of Jan.,
1902.

F. GARRISON.

Certificate removed.

Page 9.

Stub: Certificate No. 9. For 20½ shares. Issued to E. T. Harmon.
Dated December 31, 1901.

Received certificate No. 9 for 20½ shares this 23rd day of Jan.
1902.

E. T. HARMON.

Certificate removed.

Page 10.

Stub: Certificate No. 10. For 22 shares. Issued to E. T. Harmon.
Dated Dec. 31, 1901.

Received certificate No. 10 for 22 shares this 23rd day of Jan.
1902.

E. T. HARMON.

Certificate removed.

908

Page 11.

Stub: Certificate No. 11. For 35 shares. Issued to Geo. A. Whiting.
Dated Dec. 31, 1901.

Received certificate No. 11 for 35 shares this 23rd day of Jan.,
1902.

GEO. A. WHITING.

Certificate removed.

Page 12.

Stub: Certificate No. 12. For 25 shares issued to C. A. Babcock.
Dated Dec. 31, 1901.

Received certificate No. 12 for 25 shares this 23rd day of Jan.,
1902.

C. A. BABCOCK.

Certificate removed.

Page 13.

Stub: Certificate No. 13. For 45 shares. Issued to W. L. Edmonds. Dated Dec. 31, 1901.

Received certificate No. 13 for 45 shares this 23rd day of Jan., 1902.

W. L. EDMONDS.

Certificate removed.

909

Page 14.

Stub: Certificate No. 14. For 15 shares. Issued to A. M. Pride. Dated Dec. 31, 1901.

Received certificate No. 14 for 15 shares this 23rd day of Jan., 1902.

A. M. PRIDE.

Certificate removed.

Page 15.

Stub: Certificate No. 15. For 75 shares. Issued to D. R. Davis. Dated Dec. 31, 1901.

Received certificate No. — for 75 shares this 23rd day of Jan., 1902.

D. R. DAVIS.

Certificate Re-attached.

Number 15.

General Paper Company.

Shares, 75.

Capital Stock, \$100,000.00.

This certifies that D. R. Davis is the owner of seventy-five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be
910 sealed with the seal of the corporation this 31st day of December, A. D. 1901.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Seal General Paper Company.]

Written across face of certificate: "Cancelled November 1st, 1903, and new certificate No. 28 issued to W. L. Davis."

On back:

"Certificate for 75 shares of the capital stock General Paper Company issued to — — dated — —.

For value received — hereby sell, assign and transfer unto W. L. Davis — shares of the capital stock represented by the within cer-

tificate, and do hereby irrevocably constitute and appoint J. A. Kimberly, pres't, and L. M. Alexander, sec'y, to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Oct. 28, 1903.

CLAIRE M. DAVIS,
JAMES F. JOYCE,
W. L. DAVIS,

As Administrators of Estate of D. R. Davis, Dec.

In presence of
J. A. FILP.

I. R. stamps \$3.75 cancelled.

911

Page 16.

Stub: Certificate No. 16. For 36 shares issued to E. A. Edmonds.
Dated Dec. 31, 1901.

Received certificate No. 16 for 36 shares this 23rd day of Jan.
1902.

E. A. EDMONDS.

Certificate Re-attached.

Number 16. General Paper Company. Shares, 36.

Capital Stock \$100,00-.00.

This certifies that E. A. Edmonds is the owner of thirty-six shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Seal General Paper Company.]

Written across face: "Cancelled Dec. 13th, 1904. New certificates issued No. 32, 34 shares; No. 33, 1 share; No. 34, 1 share."

On back: Printed blank unfilled. (I. R. stamps cancelled \$1.80.)

912

Page 17.

Stub: Certificate No. 17. For 22½ shares. Issued to B. F. Nelson. Dated Dec. 31, 1901.

Received certificate No. 17 for 22½ shares this 23rd day of Jan.
1902.

B. F. NELSON.

Certificate removed.

Page 18.

Stub: Certificate No. 18. For 1 share. Issued to W. Z. Stuart, treasury stock. Dated Dec. 31, 1901.

Received certificate No. 18 for 1 share this 23rd day of Jan. 1902.

W. Z. STUART.

Certificate removed.

Page 19.

Stub: Certificate No. 19. For 1 share. Issued to A. C. Bossard. Dated Jan. 23, 1903. Treasury stock ordered issued by directors 1/23/02.

Received certificate No. 19 for 1 share this 9th day of Dec. 1902, for

A. C. BOSSARD.

Certificate removed.

913

Page 20.

Stub: Certificate No. 20. For 60 shares. Issued to C. I. McNair. Dated April 10, 1902.

Received certificate No. 20 for sixty shares this 11th day of June, 1902.

C. I. McNAIR.

Certificate removed.

Page 21.

Stub: Certificate No. 21 for 29 shares. Issued to A. C. Bossard. Dated May 22, 1902.

Received certificate No. 21 for 29 shares this 9th Dec. 1902.

A. C. BOSSARD.

Certificate removed.

Page 22.

Stub: Certificate No. 22 for 21 shares. Issued to F. M. Aiken. Dated July 22, 1902.

Received certificate No. 22 for 21 shares this first day of December, 1902.

F. M. AIKEN.

Certificate Re-attached.

Number 22.

General Paper Company.

Shares, 21.

914 This certifies that F. M. Aiken is the owner of twenty-one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 1st day of December, A. D. 1902.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Seal General Paper Company.]

Written across face of certificate: "Cancelled Dec. 21, 1903. New certificate No. 31 issued to L. H. Cheeseman."

On back: "For value received I hereby sell, assign and transfer unto L. H. Cheeseman — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint the secretary of General Paper Co. to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Dec. 17, 1903.

F. M. AIKEN."

In presence of

915

Page 23.

Stub: Certificate No. 23. For 28 shares. Issued to W. B. Murphy. Dated Dec. 9, 1902.

Received certificate No. 23 for 28 shares this 15th day of Jan. 1903.

W. B. MURPHY.

Certificate removed.

Page 24.

Stub: Certificate No. 24 for 28 shares. Issued to F. D. Naber. Dated Dec. 9, 1902.

Received certificate No. 24 for 28 shares this 28th day of Jan. 1903.

F. D. NABER.

Certificate removed.

Page 25.

Stub: Certificate No. 25. For 54 shares. Issued to M. H. Ballou. Dated Dec. 9, 1902.

Received certificate No. 25 for 54 shares this 9th day of Dec., 1902.

M. H. BALLOU:

Certificate Re-attached.

Number 25.

General Paper Company.

Shares, 54.

916 This certifies that M. H. Ballou is the owner of fifty-four shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of

the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In witness whereof the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 9th day of December, A. D. 1902.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Seal General Paper Company.]

Written across face "Cancelled Dec. 13, 1904, and new certificates issued No. 35, 53 shares; No. 36, 1 share."

On back: "For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — 190—

M. H. BALLOU."

In presence of
— — —.

1917

Page 26.

Stub: "Certificate No. 26. For 27 shares. Issued to E. P. Sherry. Dated Dec. 9, 1902.

Received certificate No. 26 for 27 shares this 27th day of Jan. 1903.

E. P. SHERRY,
By E. A. D. REYNOLDS."

Certificate removed.

Page 27.

Stub: "Certificate No. 27. For one share. Issued to E. A. D. Reynolds. Dated Dec. 9, 1902.

Received certificate No. 27 for 1 share this 27th day of Jan'y, 1903.

E. A. D. REYNOLDS."

Certificate removed.

Page 28.

Stub: "Certificate No. 28. For 75 shares. Issued to W. L. Davis. Dated Nov. 1st, 1903.

From whom transferred: Clair M. Davis *et al.*, administrators estate of D. R. Davis, deceased. Dated Dec. 31, 1901.

No. original
certificate.

No. original
shares.

No. of shares
transferred.

15

75

75

Received certificate No. 28 for seventy-five shares this 8th day of Dec. 1903.

W. L. DAVIS.

(Certificate removed.)

918 Page 29.

Stub: "Certificate No. 29. For $4\frac{3}{4}$ shares. Issued to J. C. Kimberly. Dated Nov. 30, 1903.

From whom transferred: J. C. Kimberly.

Dated Jan. 25, 1902.

No. original
certificate.

2

No. original
shares.

$8\frac{1}{4}$

No. of shares
transferred.

$4\frac{1}{4}$

Received certificate No. 29 for four and three-fourths shares this 30th day of Nov. 1903.

JAMES C. KIMBERLY."

Certificate removed.

Page 30.

Stub: "Certificate No. 30. For 4 shares. Issued to F. J. Sensenbrenner. Dated Nov. 30, 1903.

From whom transferred: J. C. Kimberly.

Dated Jan. 25, 1902.

No. original
certificate.

2

No. original
shares.

$8\frac{1}{4}$

No. of shares
transferred.

4

Received certificate No. 30 for four shares this 30th day of Nov. 1903.

F. J. SENSENBRENNER."

Certificate removed.

919 Page 31.

Stub: "Certificate No. 31. For 21 shares. Issued to L. H. Cheeseman. Dated Dec. 21, 1903.

From whom transferred: F. M. Aiken.

Dated Dec. 1, 1902.

No. original
certificate.

22

No. original
shares.

21

No. of shares
transferred.

21

Received certificate No. 31 for 21 shares this 17th day of May, 1904.

L. H. CHEESEMAN."

Certificate removed.

Page 32.

Stub: "Certificate No. 32. For 34 shares. Issued to E. A. Edmonds. Dated Dec. 13, 1904.

From whom transferred: Himself.

Dated Dec. 31, 1901.

No. original
certificate.

16

No. original
shares.

36

No. of shares
transferred.

2

Received certificate No. 32 for 32 shares this 13th day of Dec. 1904.

E. A. EDMONDS."

Certificate removed.

920

Page 33.

Stub: "Certificate No. 33 for 1 share. Issued to J. H. Delbridge. Dated Dec. 13, 1904.

From whom transferred: E. A. Edmonds.

Dated Dec. 31, 1901.

No. original
certificate.

16

No. original
shares.

36

Number of shares
transferred.

2

Received certificate No. 33 for 1 share this 13th day of December, 1904.

J. H. DELBRIDGE."

Certificate removed.

Page 34.

Stub: "Certificate No. 34. For 1 share. Issued to Geo. W. Mead. Dated Dec. 13, 1904.

From whom transferred: E. A. Edmonds.

Dated Dec. 31, 1901.

No. original
certificate.

16

No. original
shares.

36

Number of shares
transferred.

2

Received certificate No. 34 for 1 share this 13th day of December, 1904.

GEO. W. MEAD."

Certificate removed.

921

Page 35.

Stub: "Certificate No. 35. For 53 shares. Issued to M. H. Ballou.
Dated Dec. 13, 1904.

From whom transferred: Himself.

Dated Dec. 9, 1902.

No. original
certificate.

25

No. original
shares.

54

No. of shares
transferred.

1

Received certificate No. 35 for 35 shares this 13th day of Dec. 1904.

M. H. BALLOU."

Certificate removed.

Page 36.

Stub: "Certificate No. 36. For 1 share. Issued to S. E. Smith.
Dated Dec. 13, 1904.

From whom transferred: M. H. Ballou.

Dated — —, 190—.

No. original
certificate.

25

No. original
shares.

54

No. of shares
transferred.

1

Received certificate No. 36 for 1 share this 13th day of December,
1904.

— —."

Certificate Still Attached.

" Number 36.

General Paper Company.

Shares, 1.

922 This certifies that S. E. Smith is the owner of one share of
one hundred dollars each of the capital stock of General Paper
Company transferable only on the books of the corporation
by the holder hereof in person or by attorney upon surrender of this
certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate
to be signed by its duly authorized officers and to be sealed with the
seal of the corporation this 13th day of December, A. D. 1904.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Seal General Paper Company.]

(No endorsements.)

PETITIONER'S EXHIBIT 28.
Stock Certificate Register.

To whom issued.	Date.	No. cert.	No. shares.	Amount.	Issued in lieu of—		Transferred.				To whom transferred.	No. cert.	No. shares.
					No. cert.	No. shares.	Date.	No. cert.	No. shares.	Amount.			
J. A. Kimberly.....	Dec. 31 1901	1	125	12500	.....	.....	Nov. 30 1903	2	84	875	J. C. Kimberly.....	29	44
*[J. C. Kimberly].....	" " "	2	*[84]	*[875]	.....	.....	" " "	"	"	"	F. J. Sensesbrenner.	30	4
H. Babcock.....	" " "	3	5	500	.....	.....					
J. S. Van Norwick.....	" " "	4	864	8625	.....	.....					
C. W. Howard.....	" " "	5	374	3750	.....	.....					
L. M. Alexander.....	" " "	6	60	6000	.....	.....					
T. E. Nash.....	" " "	7	974	9750	.....	.....					
F. Garrison.....	" " "	8	334	3375	.....	.....					
E. T. Harmon.....	" " "	9	204	2075	.....	.....					
E. T. Harmon.....	" " "	10	22	2200	.....	.....					
Geo. A. Whiting.....	" " "	11	35	3500	.....	.....					
C. A. Babcock.....	" " "	12	25	2500	.....	.....					
W. L. Edmonds.....	" " "	13	45	4500	.....	.....					
925			15924	159275	.....	.....							926
H. M. Pride.....	Dec. 31 1901	14	15	1500	.....	.....	Nov. 1 1903	28	75	7500	W. L. Davis.....	15	75
*[D. R. Davis].....	" " "	15	*[75]	*[7500]	.....	.....					E. A. Edmonds....	32	34
*[E. A. Edmonds]....	" " "	16	*[36]	*[3600]	.....	.....	Dec. 13 1904	16	{ 1	3400	J. H. Delbridge....	33	1
B. F. Nelson.....	" " "	17	224	2250	.....	.....				100	Geo. W. Mead.....	34	1
W. Z. Stuart (treas'ry)...	" " "	18	1	100	.....	.....					

929

PETITIONER'S Ex. 29.

First 26 Pages.

Being Book Containing Records of Meetings of General Paper Company.

The articles of association are first set forth, as in Petitioner's Exhibit 1.

Said Petitioner's Exhibit 29 then reads as follows:

Amendments.

1. Paragraph "fourth" was amended December 9, 1902, changing the number of directors from seventeen to twenty-two. See fourth item of business acted on at the annual meeting of stockholders as recorded on page 58 of this record of the proceedings, under date of December 9, 1902

2. The fourth paragraph changing the number of directors twenty-two to twenty-five, December 8, 1903. See page- 68-69 this record. (Pages 6 and 7 of the exhibit are blank.)

UNITED STATES OF AMERICA, }
The State of Wisconsin, }
Department of State. }

To all to whom these presents shall come:

I, William H. Aroehlich, secretary of state of the State of Wisconsin, do hereby certify that there has been this day filed in this department an instrument in writing purporting to be articles of association, with a view of forming a corporation to be known as General Paper Company, with a capital stock of one hundred thousand dollars, the business and purpose of which shall be the sale of paper and paper products as agents, etc., and verified as a true copy of the affidavit of Thomas E. Nash and W. Z. Stuart, who appear in said instrument as two of the signers of said articles;

Therefore, the State of Wisconsin does hereby grant unto the said General Paper Company the powers and privileges conferred by chapter 86 of the Wisconsin Statutes of 1898, and all acts amendatory thereto, for the purposes above stated, and in accordance with their said articles of association.

In witness whereof I have hereunto set my hand and affixed my official seal at the capitol in the city of Madison, the 31st day of May, in the year of our Lord one thousand nine hundred.

No. 1080.

STATE OF ILLINOIS,
Department of State. }

James A. Rose, Secretary of State.

Certificate.

Whereas General Paper Company, incorporated under the laws of the State of Wisconsin, has filed in the office of the secretary of state duly authenticated evidence of its incorporation as provided by law, and has in all respects complied with the requirements of law governing foreign corporations:

Now, therefore, I, James A. Rose, secretary of state of the State of Illinois, in virtue and by authority of law, do hereby certify that said General Paper Company is from the date hereof duly authorized to do business in the State of Illinois for a term of ninety-nine years, and is entitled to all the rights and privileges granted to foreign corporations under the laws of this State, and that the amount of said capital stock — corporation is one hundred thousand dollars, (\$100,000), and the amount of said capital stock represented in the State of Illinois is thirty thousand dollars (\$30,000).

In testimony whereof I hereunto set my hand and cause to be affixed the great seal of State.

Done at the city of Springfield this 14th day of July, A. D. 1900 and of the Independence of the United States the one hundred and twenty-fifth.

By-Laws of General Paper Company.

Article I.

SECTION 1. The annual meeting of the stockholders shall be held at the office of the company in Milwaukee, in the county of Milwaukee, in the State of Wisconsin, on the second Tuesday of December in each year for the election of directors and for the transaction of such other business as may properly come before the meeting.

SECTION 2. Special meetings of the stockholders may be held at the office of the company in Milwaukee, in the county of Milwaukee, in the State of Wisconsin, at such time and for such purposes as the board of directors may from time to time designate.

SECTION 3. Notice of the time and place and object of holding all stockholders' meetings shall be given by ten (10) days' personal notice thereof in writing to each stockholder, or by publishing notice thereof for at least fifteen days before such meeting in some newspaper published at Milwaukee in the State of Wisconsin; and if notice is given by publication a copy of

such notice shall be mailed, postage prepaid, to each stockholder of record, to his post office address as appears on the book of the corporation, at least ten days before the time of such meeting; expressly provided, however, that any and all such notices may be dispensed with if all the stockholders are present at such meeting either in person or by duly authorized attorney, and shall sign upon the records of the corporation a written consent to the holding of such meeting.

Article II.

SECTION 1. The annual meeting of the directors shall be held as soon as may be after their election in each year, at the office of the company in Milwaukee, in the county of Milwaukee, in the State of Wisconsin.

SECTION 2. The president at any time may call a meeting of the directors, and in case the president refuses any two directors in writing may request the secretary to call such a meeting, and said secretary shall call the same at the time requested at the general offices of the company, and such notice, which shall be in writing, specifying the time and place, may be given personally or by mail at least five (5) days prior to the time of such meeting; provided such notice may be dispensed with if all the directors are present at such meeting.

SECTION 3. A majority of the directors shall constitute a quorum for the transaction of business at all meetings of the board convened according to these by-laws.

SECTION 4. The board of directors may at their annual 933 meeting appoint from among the stockholders not less than nine persons of whom the president shall be one, who shall be known as the executive committee.

Article III.

SECTION 1. The executive committee, except when the board of directors is in session, shall exercise all the powers of the board of directors, and shall, subject at all times to the direction and control of the board of directors, have the immediate management of all the business of said corporation.

SECTION 2. The executive committee can be convened at any time on call of the president, and upon the written request of any two members of the executive committee the president shall call such meeting.

Article IV.

SECTION 1. All certificates of stock of said corporation shall be signed by the president and secretary and sealed with the corporate seal.

SECTION 2. Shares of the capital stock of said corporation, after certificates therefor have been issued, may be transferred in the manner prescribed by the laws of Wisconsin.

SECTION 3. The secretary shall procure a stock book in which he shall enter all the transfers of stock reported to him so as to show the names and places of residence of the parties, by and to whom transferred, the number and designation of the shares and the date of the transfer; and said corporation shall not recognize any assignment, transfer or ownership of shares unless so reported and recorded.

934

Article V.

These by-laws may be amended, altered or repealed by vote of not less than two-thirds of the issued stock in favor of any such amendment, alteration or repeal, at any annual meeting of the stockholders or at any meeting of the stockholders especially called for the purpose.

Amendment.

The following adopted at annual stockholders' meeting December 31, 1904:

"Resolved, That section 2 of article III of the by-laws of General Paper Company be amended so as to read as follows:

"SECTION 2. The executive committee can be convened at any time on call of the president and upon written request of any two members of the executive committee the president shall call such meeting."

Article III.

(SECTION 2 continued.) The first regular meeting of the executive committee (after the annual meeting on the 13th of December, 1904) shall be held on the second Thursday of January 1905, and thereafter a regular meeting shall be held on the second Thursday of each alternate month, so that from and after the second Tuesday of January, 1905, there shall be a regular meeting of the executive committee every two months.

935 Record of the Organization of General Paper Company.

We, the undersigned, being all the signers and makers of the articles of association of the General Paper Company hereby accept notice of a meeting of the signers and makers of the articles of association of the General Paper Company at the offices of Winkler, Flanders, Smith, Bottum & Vilas, Nos. 800-811 Pabst building, Milwaukee, Wisconsin, on the 26th day of May, 1900, at three o'clock p. m.

T. E. NASH.
GEO. A. WHITING.
W. Z. STEWART.

At a meeting of the signers of the articles of association of the General Paper Company, held at the offices of Winkler, Flanders, Smith, Bottum & Vilas, Nos. 800-811 Pabst building, Milwaukee,

Wis., on the 26th day of May, A. D. 1900, at three o'clock p. m., present T. E. Nash, Geo. Whiting, and W. Z. Stuart, being all the signers and makers of said articles of association. Mr. T. E. Nash was appointed the chairman and W. Z. Stuart, secretary *pro tem*.

On motion it was ordered that the books of subscription to the capital stock of said company be now opened under the inspection of Geo. A. Whiting and that said books be kept open until at least one-half of the capital stock shall have been duly subscribed.

Whereupon said inspector reported as follows:

"Subscriptions to the capital stock having been made and received to the amount of \$58,500, and the names of said subscribers of stock, their residences, respectively, and the number of shares of each subscriber will appear by the subscription which for convenience has been taken on page 17 of this record.

GEO. A. WHITING, Inspector.

Whereas I, D. E. Reese, of Appleton, in the State of Wisconsin, subscribed for fifty (50) shares of capital stock of General Company, each of the par value of one hundred dollars, on or about the 26th day of May, A. D. 1901, and am entitled to the issuance of such shares to me on payment of the full par value thereof, to-wit five thousand dollars (\$5,000);

Now, therefore, for a valuable consideration to me in hand paid by John A. Van Nortwick of Appleton, in the State of Wisconsin, I hereby sell, assign, transfer, convey and set over unto said John S. Van Nortwick, my subscription for the shares of stock above mentioned, and all my right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said shares of stock to John S. Van Nortwick on payment by him of the full par value thereof to said company: it being understood and agreed that I am released from any obligation to said obligation upon my subscription.

In witness whereof I have hereunto set my hand and seal this 27th day of December, A. D. 1901.

D. E. REESE. [SEAL.]

Executed in presence of:

W. S. HALLADAY, JR.

C. F. HARNIE.

937 Whereas I, W. Z. Stuart, of Neenah, in the State of Wisconsin, subscribed for fifty (50) shares of capital stock of General Paper Company, each of the par value of one hundred dollars, on or about the 26th day of May, A. D. 1900, and am entitled to the issuance of such shares to me on payment of the full par value thereof, to-wit five thousand dollars:

Now therefore, for a valuable consideration to me in hand paid by J. C. Kimberly of Neenah, Wisconsin, I hereby sell, assign, transfer,

convey and set over unto J. C. Kimberly, my subscription for the shares of stock above mentioned, and all my right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said shares of stock to J. C. Kimberly upon payment by him of the full par value thereof to said company; it being understood and agreed that I am released from any obligation to said company upon my subscription.

In witness whereof, I have hereunto set my hand and seal this 24th day of December, A. D. 1901.

W. Z. STUART. [SEAL.]

Executed in presence of—
P. M. MORGAN.

Whereas John Daly, now deceased, late of Grand Rapids in the State of Wisconsin, subscribed on or about the 26th day of May, A. D. 1900, for twenty shares, and on or about the 19th day of December, A. D. 1901, subscribed for fifteen additional shares of the capital stock of General Paper Company, each of the par value of one hundred dollars, and was entitled to the issuance of such 938 shares on payment of the full par value thereof, to-wit, thirty-five hundred dollars;

Now, therefore, for a valuable consideration to us, executors of the last will and testament of John Daly, deceased, in hand paid by E. T. Harmon, of Grand Rapids in the State of Wisconsin, we hereby sell, assign, transfer and convey and set over unto the said E. T. Harmon said subscriptions of John Daly, deceased, for the shares of stock above mentioned, and all right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said shares of stock to said E. T. Harmon upon payment by him of the full par value thereof to said company; it being understood and agreed that the executors of the will of said John Daly, deceased, are released from any obligations to said company upon said subscriptions.

In witness whereof we have hereunto set our hands and seals this 29th day of January, A. D. 1902.

ELIZABETH N. DALY,
CHARLES C. DALY,
JOHN O. DAY,

Executors of the Last Will and Testament
of John Daly, Deceased.

Executed in presence of—
CAROLINE KUNTZ.
THEO. W. BRAZEAN.

939 Whereas I, W. L. Edmonds, of Wausau, in the State of Wisconsin, subscribed in the name of N. H. Brokaw, now deceased, for thirty shares of the capital stock of General Paper Company, each of the par value of one hundred dollars, on or about the 26th day of May, 1900, and am entitled to the issuance of such

shares to me on payment of the full par value thereof, to-wit, three thousand dollars:

Now, therefore, for a valuable consideration to me in hand paid by E. A. Edmonds, of Oconto Falls, Wisconsin, I hereby sell, assign, transfer, convey and set over unto the said E. A. Edmonds, my subscription for the shares of stock above mentioned, and all my right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said shares of stock to said E. A. Edmonds upon payment by him of the full par value thereof to said company; it being understood and agreed that I am released from any obligation to said company upon my subscription.

In witnesseth whereof I hereunto set my hand and seal this 27th day of December, A. D. 1901.

W. L. EDMONDS. [SEAL.]

Executed in presence of
H. C. MACRORIE.
J. E. GEORGE.

Whereas I, J. A. Kimberly, of Neenah, in the State of Wisconsin, subscribed in the name of F. C. Shattuck, now deceased, for five shares of the capital stock of General Paper Company, each
940 of the par value of one hundred dollars, on or about the 26th day of May, A. D. 1900, and am entitled to the issuance of such shares to me on payment of the full par value thereof, to-wit, five hundred dollars:

Nor therefore, for a valuable consideration to me in hand paid by H. Babcock, of Neenah, in the State of Wisconsin, I hereby sell, assign, transfer, convey and set over unto H. Babcock, my subscription for the shares of stock above mentioned, and all my right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said shares of stock to H. Babcock upon the payment by him of the full par value thereof to said company; it being understood and agreed that I am released from any obligation to said company upon my subscription.

In witness whereof I have hereunto set my hand and seal this 31st day of December, A. D. 1901.

J. A. KIMBERLY. [SEAL.]

Executed in presence of
W. L. EDMONDS.

Whereas I, H. M. French, of the city of St. Louis, in the State of Missouri, subscribed for one share of the capital stock of General Paper Company of the par value of one hundred dollars, on or about the 10th day of December, A. D. 1900, and am entitled to the issuance of such share to me on payment of the full par value thereof, to-wit, one hundred dollars;

Now, therefore, for a valuable consideration to me in hand paid I hereby sell, assign, transfer, convey and set over unto the treas-

941 urer of the General Paper Company my subscription for the share of stock above mentioned and all my right, title and interest therein, and hereby authorize, empower and direct General Paper Company to issue said share of stock to said treasurer upon payment by him of the full par value thereof to the said company, it being understood and agreed that I am released from any obligation to said company upon my subscription.

In witness whereof I have hereunto set my hand and seal this 27th day of December, A. D. 1901.

H. M. FRENCH. [SEAL.]

Witness:

A. D. COOPER.

942 (Page 17 of Petitioner's Exhibit 29.)

Each of the undersigned hereby subscribes for the number of shares of stock in General Paper Company set opposite the name of each subscriber and agrees to pay there for the full par value thereof.

Name.	Residence.	No of shares.	Par value.
E. A. Edmonds.....	Oconto Falls.....	13	1300.
T. E. Nash.....	Grand Rapids, Wis.....	30	3000.
J. S. Van Nortwick.....	Appleton.....	64	6400.
F. Garrison.....	Grand Rapids, Wis.....	20	2000.
L. M. Alexander.....	Milwaukee, Wis.....	30	3000.
John Daly (by E. T. H.)....	Grand Rapids.....	15	1500.
E. T. Harmon.....	Grand Rapids.....	17	1700.
A. M. Pride.....	Tomahawk.....	15	1500.
W. L. Edmonds.....	Wausau.....	40	4000.
D. R. Davis.....	Eau Claire.....	50	5000.
B. F. Nelson.....	Minneapolis.....	29	2900.
C. W. Howard.....	Menasha.....	40	4000.
C. A. Babcock.....	Menasha.....	25	2500.
J. A. Kimberly.....	Neenah.....	25	2500.
		<hr/> 413	<hr/> 41300.

943 Each of the undersigned hereby subscribes for the number of shares of stock set opposite the name of such subscriber and agrees to pay therefor the full par value thereof:

Name.	Residence.	No of shares.	Amount.
J. A. Kimberly.....	Neenah.....	100	10,000.
J. C. Kimberly, (by J. A. K.)	".....	5	500.
W. Z. Stuart.....	".....	50	5,000.
E. T. Harmon.....	Grand Rapids.....	5	500.
John Daly.....	Grand Rapids.....	20	2,000.

L. M. Alexander.....	Port Edwards, Wis.....	50	5,000.
A. M. Pride.....	Tomahawk	5	500.
C. A. Babcock.....	Neenah	5	500.
Geo. A. Whiting.....	Neenah	50	5,000.
C. W. Howard.....	Neenah	10	1,000.
F. Garrison.....	Centralia.....	25	2,500.
T. E. Nash.....	Centralia.....	100	10,000.
C. C. Shattuck.....	Neenah	5	500.
E. A. Edmonds (by W. L. Edmonds)	Oconto Falls.....	5	500.
D. E. Reese.....	Combined Locks.....	50	5,000.
D. R. Davis.....	Eau Claire.....	50	5,000.
N. H. Brokaw (by W. L. Edmonds)	Kaukauna.....	30	3,000.

(Deceased. Stock assumed by E. A. Edmonds, Oconto Falls.)

W. L. Edmonds.....	Wausau	20	2,000.
		<hr/> 585	<hr/> 58,500.
(B. F. Nelson.....	Minneapolis	1	100.
(J. F. Van Nortwick.....	Appleton.....	1	100.

These shares subscribed for June 18 / 1900

H. M. French.....	Chicago, Ill.....	1	100.
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This share subscribed for 12 / 10 / 1900

Total.....		<hr/> 588	<hr/> 58,800.
Less H. M. French, cancelled.		1	100.
		<hr/> 587	<hr/> 58,700.
Brought over from other list.....		413	41,300.
Total subscribed.....		<hr/> 1000	<hr/> 100,000.

944 Whereupon the meeting adjourned.

W. Z. STUART,
Secretary *pro Tem*.

We, the undersigned, being all the signers and makers of the articles of association of the General Paper Company do hereby certify that the foregoing minutes are true and correct and do hereby approve of same.

T. E. NASH.
W. Z. STUART.
GEO. A. WHITING.

Meeting of Stock Subscribers.

At a meeting of the stock subscribers of the General Paper Company held at the offices of Winkler, Flanders, Smith, Bottum & Vilas, Nos. 800-811 Pabst building, Milwaukee, Wis., on the 26th day of May, A. D. 1900, at 3:30 o'clock p. m., the following consent was duly signed, to-wit:

We, the undersigned, being all the subscribers for stock of the General Paper Company, being now here present, do hereby consent to the holding of this meeting.

Dated May 26th, A. D. 1900.

T. E. NASH.

J. A. KIMBERLY.

JOHN DALY

GEO. A. WHITING.

A. M. PRIDE.

D. E. REESE.

L. M. ALEXANDER.

F. GARRISON,

C. W. HOWARD.

C. A. BABCOCK.

N. H. BROKAW.

E. A. EDMONDS.

W. L. EDMONDS.

E. H. HARMON.

D. R. DAVIS.

W. Z. STUART.

J. C. KIMBERLY,

By J. A. K.

F. C. SHATTUCK,

By J. A. K.

Whereupon on motion Mr. T. E. Nash was appointed chairman and W. Z. Stuart secretary *pro tem*.

945 Whereupon the following report was submitted:

"On the 26th day of May, A. D. 1900, pursuant to the direction of the signers and makers of the original articles of association of the General Paper Company we caused a true copy of such original articles, duly verified as such by the affidavit of the signers thereof, to be forwarded for record by the register of deeds in and for Milwaukee county, Wisconsin, in volume — of Incorporations on pages — in the office of the register of deeds of Milwaukee county, in which county said corporation is located, and paid to said register his fees therefor, and on the 26th day of May, A. D. 1900, under the direction aforesaid, we forwarded for filing with the secretary of state or the State of Wisconsin a like verified copy of such articles of association and paid to said secretary of state for filing such copy and for issuing a certificate of such corporation the sum of one hundred dollars.

WINKLER, FLANDERS, SMITH, BOTTUM &
VILAS, Attorneys."

Whereupon the following resolutions were unanimously adopted:

Resolved, That the foregoing report of Winkler, Flanders, Smith, Bottum & Vilas be received and approved.

Resolved That the report of George A. Whiting, inspector, that more than one-half of the capital stock of this corporation has been subscribed, be received, and the same is hereby approved.

Resolved That the by-laws now submitted be the by-laws of this corporation and that for convenience they be recorded on pages 10 to 13, inclusive of this record.

946. Resolved That the election of directors be now had and that George A. Whiting and W. Z. Stuart be appointed tellers.

Whereupon an election of directors was held, and said tellers reported as follows:

"All of the stock subscribers voted either in person or by duly authorized attorney, with the following result, to-wit: 17 directors were voted for and the following persons, each being a subscriber, were elected: T. E. Nash, J. A. Kimberly, John Daly, George A. Whiting, A. M. Pride, D. E. Reese, L. M. Alexander, F. Garroson, C. W. Howard, C. A. Babcock, N. H. Brokaw, W. L. Edmonds, E. T. Harmon, D. R. Davis, W. Z. Stuart, J. C. Kimberly, F. C. Shattuck.

GEORGE A. WHITING,
W. Z. STUART, Tellers.

Resolved That the foregoing report of said tellers be received and approved.

Whereupon the first stock subscribers' meeting adjourned subject to call of the president.

W. Z. STUART,
Secretary pro Tem.

947 Pursuant to due notice the adjourned meeting of the stockholders convened in Appleton, Wisconsin, June 2, 1900, at the office of Wood Supply Co. Present, T. E. Nash, L. M. Alexander, Geo. A. Whiting, J. A. Kimberly, E. T. Harmon, A. M. Pride, F. C. Shattuck C. W. Howard, C. A. Babcock, F. Garrison, D. E. Reese, D. R. Davis, N. H. Brokaw, W. L. Edmonds, W. Z. Stuart.

Meeting called to order by President Nash.

On motion N. H. Brokaw, seconded by D. R. Davis, section 4 of article II of the by-laws as presented, be amended and changed so as to read as follows:

"SECTION 4. The board of directors may at their annual meeting appoint from among the stockholders not less than nine persons, of whom the president shall be one, who shall be known as the 'executive committee.'"

Unanimously carried.

Upon motion duly carried the stockholders' meeting adjourned.

W. Z. STUART,
Secretary pro Tem.

Directors' Meeting.

At the first meeting of the directors of the General Paper Company held at the offices of Winkler, Flanders, Smith, Bottum & Vilas, Nos. 800-811 Pabst building, Milwaukee, Wisconsin on the

26th day of May, A. D. 1900. Present: All of the directors of said company.

On motion Thomas E. Nash was called to the chair and W. Z. Stuart was appointed secretary *pro tem*.

948 Upon motion duly carried, the first directors' meeting then adjourned to meet in Appleton, Wisconsin, June 2nd, 1900, at one o'clock p. m., at Pulpwood Supply Company's offices.

Adjourned meeting of directors met pursuant to above June 2nd 1900, at Appleton, with T. E. Nash in chair, and present Secretary *pro Tem* Stuart, J. A. Kimberly, George A. Whiting, E. T. Harmon, A. M. Pride, F. C. Shattuck, C. W. Howard, C. A. Babcock, F. Garrison, D. E. Reese, D. R. Davis, N. H. Brokaw, W. L. Edmonds, L. M. Alexander. (Absent, John Daly and J. C. Kimberly.)

Upon motion J. A. Kimberly, seconded N. H. Brokaw, and duly carried, it was—

Resolved, That the directors proceed to the election of the officers of the company and that D. R. Davis and E. A. Edmonds be appointed tellers.

Whereupon an election of officers was held and the tellers reported as follows:

J. A. Kimberly was elected president.

N. H. Brokaw was elected first vice president.

Geo. A. Whiting was elected second vice president.

L. M. Alexander was elected secretary and treasurer.

E. A. EDMONDS, Teller.

Whereupon the following resolution was unanimously adopted:

Resolved, That the foregoing report of the tellers be received and approved.

Whereupon T. E. Nash retired from the chair, and W. Z. Stuart retired as secretary *pro tem*.

W. Z. STUART,
Secretary *pro Tem*.

949 The directors' meeting continued with J. A. Kimberly, president elect, in the chair, and L. M. Alexander, secretary elect.

Upon motion duly carried, a committee composed of the officers elect was appointed with powers *ad interim* to select a manager of sales, suitable offices in Chicago and do all such other work necessary as would facilitate the general working details, such committee being J. A. Kimberly, N. H. Brokaw, George A. Whiting, and L. M. Alexander.

L. M. ALEXANDER, Secretary.

Directors' Meeting.

The board of directors after their organization continued their meeting and the following proceedings were had, to-wit:

Resolved, That the by-laws adopted by the subscribers, and recorded on pages 10 to 13 inclusive of this record, be the by-laws of this corporation.

Resolved That the seal now submitted by and the same is hereby adopted as the corporate seal of this company and an impression thereof be now here made on this page.

(Impression seal "General Paper Company, Milwaukee, Wisconsin, May, 1900.")

Resolved That the president and secretary be and they are hereby directed to issue stock certificates to stock subscribers as they have complied or may severally comply with the terms of their respective subscriptions, and that the form of stock certificate now here submitted be adopted and approved, to-wit:

950 "Incorporated under the Laws of the State of Wisconsin.

Number —.

Shares, —.

General Paper Company.

Capital Stock, \$—.

This certified that — is the owner of — shares of — each of the capital stock of the General Paper Company full paid and non-assessable; transferrable only on the books of the corporation or by attorney on surrender of this certificate.

In witness whereof the president and secretary have hereunto subscribed their named and caused this corporate seal to be hereto affixed at — Wisconsin, this — day of May, A. D. 1900.

—, President.

—, Secretary.

{ Corporate Seal General Paper Company, }
{ Milwaukee, Wisconsin, May, 1900. }

— shares. — each.

L. M. ALEXANDER, Secretary."

(NOTE.)—On June 5, 1905, Mr. Flanders' stenographer, read from Petitioner's Exhibit 29 the first 26 pages, which the examiner recorded in shorthand, and the foregoing pages of this exhibit are a transcript of his notes as aforesaid.

951

PETITIONER'S EXHIBIT 30.

This agreement between General Paper Company, a corporation organized and existing under the laws of Wisconsin and having its general office in Milwaukee, Wisconsin, party of the first part, and Kimberly & Clark Company, a corporation organized and existing

under the laws of Wisconsin and having its general office at Neenah, Wisconsin, party of the second part, witnesseth:

First. Said General Paper Company solicits and hereby accepts the position of sales agent for Kimberly & Clark Company for the product of the following named mills, for and during the period of five (5) years from the date of this contract, and upon the conditions therein contained, and covenants and agrees with said Kimberly & Clark Company that it will in all respects and at all times faithfully observe and comply with all the terms and conditions and restrictions of said sales agency as herein prescribed.

Said General Paper Company further covenants and agrees to and with the said Kimberly & Clark Company that it will use its best efforts to sell, at best prices obtainable, and upon the best terms and conditions, any and all box lining, hanging, novel, print, fibre and

952 manila paper manufactured by Kimberly & Clark Company at its Quinnesec, Globe and Kimberly mills and entrusted to it for sale by Kimberly & Clark Company, and that the General Paper Company will use its best efforts to keep the before-named mills owned or controlled by Kimberly & Clark Company supplied with orders for paper of the character above described, adapted in quality, width and character to suit the various machines in the mill or mills hereinbefore named, owned or controlled by said Kimberly & Clark Company.

Said General Paper Company further covenants and agrees with said Kimberly & Clark Company to use its best efforts to secure and maintain harmony between said Kimberly & Clark Company and its customers and other consumers according to such requirements of each as may have been heretofore established.

In consideration of the services of said General Paper Company as sales agent of said Kimberly & Clark Company as herein prescribed, said General Paper Company shall be entitled to demand and receive from said Kimberly & Clark Company a commission of three (3) per cent. upon any and all sales effected by it for Kimberly & Clark Company approved by latter.

953 Second. Said Kimberly & Clark Company has appointed and created, and by these presents does appoint and create General Paper Company aforesaid its sales agent for the period of five years from the date of this contract, with full power to sell and for the purpose of selling upon the terms and conditions herein contained, any and all box lining, hanging, novel, print, and manila paper manufactured by Kimberly & Clark Company at said mills.

Said Kimberly & Clark Company further covenants and agrees to and with General Paper Company that for the period of five (5) years from the date of this contract said General Paper Company is constituted and shall be the sole sales agent of said Kimberly & Clark Company for the sale of any and all box lining, hanging, novel, print, fiber and manila paper manufactured by Kimberly & Clark Company at said mills, and that during said period of five (5)

years from the date of this contract any and all paper of the grades and classes hereinbefore described manufactured by said mills of Kimberly & Clark Company shall be sold only through and by said General Paper Company and that said Kimberly & Clark Company will not sell or cause to be sold any of the grades or classes of paper hereinbefore described manufactured by it, by or through any other agent or agency, person or corporation whatever other than said General Paper Company, and that it will not during said period of five (5) years from date of this contract itself sell or cause to be sold any paper manufactured by it in the aforesaid mills of the classes or grades hereinbefore described in any manner whatever except by and through said General Paper Company.

In consideration of the services of said General Paper Company as sales agent of said Kimberly & Clark Company for 954-1149 said mills as herein prescribed, said Kimberly & Clark

Company agrees to pay to said General Paper Company a commission of three (3) per cent. upon any and all sales effected by General Paper Company for Kimberly & Clark Company from said mills approved by latter.

Third. Any and all sales effected by the said General Paper Company for Kimberly & Clark Company and any and all orders obtained by the General Paper Company for the product of the said mills of Kimberly & Clark Company shall be made and obtained by said General Paper Company expressly subject to approval by said Kimberly & Clark Company. It is, moreover, expressly understood and agreed that said General Paper Company is not and shall not be required in any case to guarantee the payment of any account or accounts sold through the agency of said General Paper Company.

In witness whereof the said General Paper Company has caused these presents to be signed by its president and secretary and its corporate seal to be hereunto affixed, and said Kimberly & Clark Company has caused these presents to be signed by its president and secretary and its corporate seal to be hereunto affixed this fifth day of July, A. D. 1900.

[Seal General Paper Co.]

GENERAL PAPER COMPANY,
By J. A. KIMBERLY, President.
L. M. ALEXANDER, Secretary.

[Seal Kimberly & Clark Co.]

KIMBERLY & CLARK CO.,
By J. A. KIMBERLY, President.
F. C. SHATTUCK, Secretary.

Checked by C. A. Babcock, 6/25, 1900.

* * * * *

1150 Petitioner's Ex. 101 set out in record of testimony.

1151 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

EXHIBITS Nos. 102-138.

Direct examination..... Page.
Cross examination.....
Re-direct examination.....
Re-cross examination.....

ROBERT S. TAYLOR,
Special Examiner.

Filed June 1, 1905.

EDW. KURTZ, Clerk.

1152 PETITIONER'S EXHIBIT 102.

Original Payments Account Capital Stock Made to General Paper Company and Dates of Payment Made Thereon, Being 30 % of 75 % of \$100,000, Covering 1,000 Shares.

Received July 5th, 1900:

Shareholders.	No. shares.	Amount.	30 % of 75 % is
J. A. Kimberly.....	260	26,000.00	5,850.00
F. C. Shattuck.....			
J. C. Kimberly.....			
J. S. Van Nortwick.....			
T. E. Nash.....	90	9,000.00	2,025.00
F. Garrison.....	145	14,500.00	3,262.50
L. M. Alexander.....	46	4,600.00	1,035.00
John Daly & E. T. Harmon.....	72	7,200.00	1,620.00
G. A. Whiting & C. A. Babcock.....	54	5,400.00	1,215.00
C. W. Howard.....	72	7,200.00	1,620.00
D. R. Davis.....	34	3,400.00	765.00
N. H. Brokaw, E. A. & W. L. Edmonds.....	81	8,100.00	1,822.50
	99	9,900.00	2,227.50

Received July 16th, 1900:

A. M. Pride.....	18	1,800.00	405.00
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Received August 16th, 1901:

B. F. Nelson.....	29	2,900.00	652.50
	1000	\$100,000.00	\$22,500.00

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PETITIONER'S EXHIBIT 103.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss :

The President of the United States of America to L. M. Alexander, individually and as secretary and treasurer of General Paper Company, residing at Milwaukee, Wisconsin; John A. Davis, individually and as general sales manager of General Paper Company, residing at Chicago, Ill., Greeting :

You and each of you are hereby commanded that laying aside all business and excuses, you and each of you be and appear in your proper persons before Robert S. Taylor, special examiner of the United States circuit court for the district of Minnesota, at U. S. commissioner's room, 314 Federal building, in the city of Milwaukee, and State of Wisconsin, at 10 o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined, and to give evidence on the part of the United States of America in the case of United States of America vs. General Paper Company, The Itasca

Paper Company, Hennepin Paper Company, Wolf River Paper Company, and Fibre Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petokey Fibre Paper Company, and Rhinelander Paper Company, defendants.

And you and each of you are further required to bring with you and produce at the time and place aforesaid, the following books, papers and documents, to-wit :

All written contracts or agreements made and entered into between the first day of May 1900, and the present time, by and between the above named defendant General Paper Company, and any and all publishers of newspapers in the following named cities for the furnishing by said General Paper Company of roll print or news print paper to said publishers :

Milwaukee, Wisconsin ;
Oshkosh, Wisconsin ;
St. Paul, Minnesota ;

Minneapolis, Minnesota;
 Duluth, Minnesota;
 Des Moines, Iowa;
 Dubuque, Iowa;
 Stouxx City, Iowa;
 1155 Omaha, Nebraska;
 Kansas City, Missouri;
 St. Louis, Missouri;
 Chicago, Illinois;
 New Orleans, Louisiana;
 Denver, Colorado;
 Salt Lake City, Utah.

And this you are not to omit under the penalty which may ensue.
 Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme
 Court of the United States of America, at Milwaukee, the 12th day
 of May, in the year of our Lord, one thousand nine hundred and
 five, and of the Independence of the United States the one hundred
 and twenty-ninth.

(Signed)

EDWARD KURTZ, Clerk.

Endorsed on back: "5197. (Title.) Subpœna to John A. Davis
 and L. M. Alexander."

"UNITED STATES OF AMERICA, }
 Northern District of Illinois, } ss:

I have served this writ within my district in the following man-
 ner, to-wit: upon the within named John A. Davis by reading the
 same to and within his presence and hearing on the 15th day of
 May, 1905, at the same time delivering to him a true copy thereof.

JOHN C. AMES, U. S. Marshal,
 By WILLIAM H. GRIFFITH, Deputy.

1 service.....	.50
1 mile.....	.06
Total.....	\$.56 "

"I hereby certify and return that I served the within subpœna
 on L. M. Alexander by delivering to him personally a true copy of
 said subpœna. 4

THOMAS B. REID, U. S. Marshal,
 By W. N. DURLEIN, Deputy.

Service.....	50
Mileage.....	12
	<hr/> 62

1156

PETITIONER'S EX. 104.

Agreement made this seventh day of May 1902 between General Paper Company, a corporation organized under the laws of the State of Wisconsin, hereinafter called the manufacturer, party of the first part, and the Duluth News Tribune Company, hereinafter called the purchaser, party of the second part witnesseth, that:

The parties hereto in consideration of the mutual promises and agreements of each other, and of the sum of one dollar and other good and valuable considerations, each to the other in hand paid, the receipt whereof is hereby acknowledged do hereby covenant and agree each with the other, as follows, that is to say:

First. The manufacturer hereby agrees to sell and furnish to the purchaser, and the purchaser hereby agrees to purchase from the manufacturer and receive for use in the publication of the Duluth News Tribune a newspaper published in the city of Duluth, Minnesota and for its continuous use during one year, or twelve months from June 1st, 1902, estimated 400 tons to be shipped as ordered our standard roll print, equal to sample attached, on the following basis of weight: 24 x 36—32 to 500 sheets.

Width of rolls 34 $\frac{1}{2}$ and 17 $\frac{3}{4}$ inches. Diameter of rolls —

Approximate weight of rolls 600 lbs. and 300 lbs.

Iron cores iron Diameter of cores 3 inches.

Kind of press—Hoe

No claims for visibly damaged paper shall be entertained
1157 by the manufacturer unless the purchaser states in his railway receipt for the goods that the same are damaged, or should the paper when in use prove damaged or so seriously defective as to prevent its use. In either case the manufacturer shall be advised of same at once and the paper set aside for disposition of manufacturer or railway, as the case may be.

Second. The purchaser hereby covenants and agrees to pay the manufacturer for all paper delivered under this contract two and 7 $\frac{1}{2}$ / 100 (\$2.07 $\frac{1}{2}$) per hundred pounds f. o. b. Cloquet, Minn. actual gross weight of the rolls including paper, wrappers and twine, but excluding the weight of the cores.

Third. The terms of payment shall be cash in current exchange. on 10th to 15th of each month following shipment each car less 3% discount.

This contract is subject to the usual contingencies of strikes, floods, fires or other causes beyond the control of the manufacturer or purchaser.

In case the purchaser shall fail to pay any amounts due thereunder or any note or notes given in settlement, within five days after maturity, the manufacturer may, at his option, cancel this contract and refuse to furnish any more paper hereunder, but the purchaser shall remain liable to the manufacturer for all loss and damage sustained by reason of such failure.

The first car under this contract shall be shipped on or about June 10th 1902 and on all subsequent shipments fifteen days' notice to ship shall be given by the purchaser.

1158-1259 This contract executed in duplicate.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

GENERAL PAPER COMPANY,
By E. B. MENDSEN, Manufacturer.

— — —, Purchaser.

1260 Petitioner's Ex. 137 is copied in record of testimony at close of Brown's testimony.

* * * * *

1261 PETITIONER'S EXHIBIT 138.

CHICAGO, Jan. 2nd, 1902.

We suggest the following arrangement between the M. P. Co. and G. P. Co.:

That the G. P. Co. shall for a term, to be at least one year, allow M. P. Co. to renew any orders which it may have, paper for which is being supplied by G. P. Co.'s mills. G. P. Co. being the sole judge as to what prices, terms and conditions they make, either directly or indirectly, paper for customers referred to.

The M. P. Co. are willing to agree not to offer any paper from the East to any customers, either direct or indirect of the G. P. Co.

N. P. Co. suggest their best efforts in securing business in any section of the country in case the G. P. Co. wish them to do so, if not in direct competition with any mill that the M. P. Co. may be selling agent for.

1262 United States Circuit Court for the District of Minnesota,
Third Division.

UNITED STATES OF AMERICA, Petitioner, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

To the United States circuit court for the eastern district of Wisconsin:

I, Robert S. Taylor, special examiner appointed in the above cause in the United States circuit court for the district of Minnesota, with authority to hear and to take testimony in the said cause both within and without the said district of Minnesota, do hereby certify that the foregoing transcript of exhibits, is a true and correct transcript of all the exhibits offered in evidence before me, as such special examiner, at the hearings in said cause held on the 18th,

17th, 18th, 19th, 23rd, 24th, and 25th days of May, 1905, pursuant to orders by me duly made and entered, said exhibits being numbered 1 to 138, inclusive, excepting Petitioner's Exhibit 23, which was withdrawn, and Petitioner's Exhibits 101 and 137, which are set forth in the record of the testimony.

ROBT S. TAYLOR,
Special Examiner.

Dated this 6th day of June, 1905.

1263 In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of L. M. ALEXANDER, GEORGE A. WHITING, and W. Z. STUART.

It is hereby mutually stipulated and agreed between the parties to the above entitled matter that the schedule hereto annexed may be made a part of and attached to the exhibits referred to therein and on file in said matter.

JAMES M. BECK,
F'NK B. KELLOGG,
DAVIS, KELLOGG & SEVERANCE,
Solicitors for the United States of America.
WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for General Paper Company, L. M.
Alexander, George A. Whiting, and W. Z. Stuart.

Dated August 12th, 1905.

1264 In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of L. M. ALEXANDER, GEORGE A. WHITING, and W. Z. STUART.

SCHEDULE OF EXHIBITS NOS. 1 TO 138, INCLUSIVE.

No.

1. Certified copy of articles of incorporation and amendments thereto of General Paper Company; incorporated May 26, 1900, at Milwaukee, Wisconsin.

No.

2. Articles of incorporation of the Itasca Paper Company incorporated May 4th, 1901. Location and principal place of business Grand Rapids, Itasca county, Minnesota.
 3. Articles of incorporation of the Hennepin Paper Company, incorporated March 6, 1889. Location and principal place of business at the city of Minneapolis, Minnesota.
 4. Articles of incorporation and amendments thereof of the Wolfe River Paper & Fibre Company, incorporated February 7th, 1894. Location in town of Richmond, Shawano county, Wisconsin.
 5. Articles of incorporation and amendment thereto of Atlas Paper Company, incorporated September 5th, 1878. Location, Appleton, Wisconsin.
- 1265
6. Articles of incorporation and amendment thereto of the Kimberly & Clark Company of Neenah, Wisconsin, incorporated December 18, 1880. Location, Neenah, Wisconsin.
 7. Articles of incorporation and amendments thereto of Riverside Fibre & Paper Company, incorporated January 18th, 1893. Location, Appleton, Wisconsin.
 8. Articles of incorporation and amendment thereto of Wausau Paper Mills Company, incorporated June 1st, 1899. Location, Wausau, Wisconsin.
 9. Articles of incorporation and amendments thereto of Centralia Pulp & Water Power Company, incorporated February 12, 1886. Location, Centralia, Wood county, Wisconsin.
 10. Articles of incorporation and amendments thereto of Combined Locks Paper Company, incorporated March 11th, 1889. Location, Appleton, Wisconsin.
 11. Articles of incorporation and amendments thereto of Dells Paper & Pulp Company, incorporated February 13th, 1894. Location, Eau Claire, Wisconsin.
 12. Articles of incorporation and amendment thereto of Grand Rapids Pulp & Paper Company, incorporated December 14th, 1892. Location, Grand Rapids, Wisconsin.
 13. Articles of incorporation and amendment thereto of Menasha Paper Company, incorporated June 12th, 1900. Location, Menasha, Wisconsin.
 14. Articles of incorporation of the C. W. Howard Company, incorporated July 29th, 1899. Location, Menasha, Wisconsin.
 15. Articles of incorporation of the Nekoosa Paper Company, incorporated January 14th, 1893. Location, Nekoosa, Wisconsin.
 16. Articles of incorporation and amendments thereto of the Falls Manufacturing Company, incorporated April 9th, 1884. Location, Oconto Falls, Wisconsin.
 17. Articles of incorporation and amendment thereto of Flambeau Paper Company, incorporated August 24th, 1898. Location, Park Falls, Price county, Wisconsin.

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No.

18. Articles of incorporation and amendments thereto of the John Edwards Manufacturing Company, incorporated September 18th, 1890. Location, Port Edwards, Wood county, Wisconsin.
 19. Articles of incorporation of the Wisconsin River Paper & Pulp Company, incorporated June 5th, 1891. Location at Plover, Portage county, Wisconsin.
 20. Articles of incorporation of Tomahawk Pulp & Paper Company, incorporated April 11th, 1896. Location, Rock Falls, Lincoln county, Wisconsin.
 21. Certificate of incorporation of Northwest Paper Company, incorporated May 2d, 1898. Location, Cloquet, Carlton county, Minnesota.
 22. Articles of incorporation and amendments thereto of Consolidated Water-Power & Paper Company, incorporated July 28th, 1894. Location, Grand Rapids, Wood county, Wisconsin.
 23. Withdrawn.
 24. Articles of incorporation of the Petoskey Fibre Paper Company, incorporated February 9th, 1901. Location, Petoskey, Michigan.
 25. Articles of incorporation and amendments thereto of the Rhinelander Paper Company, incorporated April 21st, 1903. Location, Rhinelander, Wisconsin.
- The purpose for which the foregoing defendant companies, except the General Paper Company, were incorporated, as disclosed by the articles of incorporation, was, in general, the manufacture and sale of paper, wood pulp and sulphite, and in connection therewith and incidental thereto the running and operating of paper mills, pulp mills or sulphite mills, the acquisition and ownership of real estate, the construction of factories, the lease or purchase of mill sites and water power, and in some cases the purchase and sale of timber lands and timber, the improvement of rivers, building of dams, canals and water-ways, docks and wharves. In two or three instances broader powers were assumed such as carrying on
- 1267 a general mercantile business, maintaining and operating electric and gas lighting plants for the company's use primarily, and in one case operating steamboats.
26. *Subpoena duces tecum* directed to Alexander, Whiting, Kimberly, Stuart and Davis.
 27. Stock certificate book of General Paper Company.
 28. Stock register book of General Paper Company.
 29. Minute book of General Paper Company, first 26 pages.
 30. Agreement between General Paper Company and Kimberly & Clark Company dated July 5th, 1900 covering period of five years from date.

No.

31. Resolution of board of directors of Kimberly & Clark Company, dated June 18th, 1900.
32. Agreement between General Paper Company and Kimberly & Clark Company, dated December 10th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
33. Resolution of board of directors of Kimberly & Clark Company, dated September 3, 1904.
34. Agreement between General Paper Company and Atlas Paper Company, dated July 5th, 1900 covering period of five years from date.
35. Resolution of board of directors of Atlas Paper Company, dated July 18th, 1900.
36. Agreement between General Paper Company and Atlas Paper Company, December 10th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
37. Agreement between General Paper Company and Combined Locks Paper Company, dated July 5th, 1900 covering period of five years from date.
38. Resolution of board of directors of Combined Locks Paper Company, dated June 4th, 1900.
39. Agreement between General Paper Company and Combined Locks Paper Company, dated May 5th, 1905 covering period from July 5th, 1905 to July 5th, 1910.
40. Agreement between General Paper Company and the W. C. Howard Company, dated July 5th, 1900 covering period of five years from date.

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41. Resolution of board of directors of the C. W. Howard Company, June 18th, 1900.
42. Agreement between General Paper Company and the C. W. Howard Company, December 14th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
43. Agreement between General Paper Company and John Edwards Manufacturing Company, dated July 5th, 1900, covering period of five years from date.
44. Resolution of board of directors of John Edwards Manufacturing Company, June 15th, 1900.
45. Agreement between General Paper Company and John Edwards Manufacturing Company, dated December 13th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
46. Resolution of board of directors of John Edwards Manufacturing Company, June 24th, 1904.
47. Agreement between General Paper Company and Nekoosa Paper Company, July 5th, 1900 covering period of five years from date.
48. Resolution of board of directors of Nekoosa Paper Company, June 14th, 1900.

No.

49. Agreement between General Paper Company and Nekoosa Paper Company, June 24th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
50. Resolution of board of directors of Nekoosa Paper Company, June 24th, 1904.
51. Agreement between General Paper Company and Centralia Pulp & Water-Power Company, dated July 5th, 1900 covering period of five years from date.
52. Resolution of board of directors of Centralia Pulp & Water-Power Company, dated June 15th, 1900.
53. Agreement between General Paper Company and Centralia Pulp & Water-Power Company, dated December 13th, 1904, covering period from July 5th, 1905 to July 5th, 1910.

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54. Agreement between General Paper Company and Grand Rapids Pulp & Paper Company, dated July 5th, 1900 covering period of five years from date.
55. Resolution of board of directors of Grand Rapids Pulp & Paper Company, dated June 16th, 1900.
56. Agreement between General Paper Company and Grand Rapids Pulp & Paper Company, dated December 13th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
57. Resolution of board of directors of Grand Rapids Pulp & Paper Company, dated July 7th, 1904.
58. Agreement between General Paper Company and Wisconsin River Paper & Pulp Company, dated July 5th, 1900 covering period of five years from date.
59. Resolution of board of directors of Wisconsin River Paper & Pulp Company, dated June 18th, 1900.
60. Agreement between General Paper Company and Wisconsin River Paper & Pulp Company, dated December 13th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
61. Resolution of board of directors of Wisconsin River Paper & Pulp Company, dated July 13th, 1904.
62. Agreement between General Paper Company and Wausau Paper Mills Company, dated July 5th, 1900 covering period of five years from date.
63. Resolution of board of directors of Wausau Paper Mills Company, dated June 8th, 1900.
64. Agreement between General Paper Company and Tomahawk Pulp & Paper Company, dated July 5th, 1900 covering period of five years from date.
65. Resolution of board of directors of Tomahawk Pulp & Paper Company, dated June 8th, 1904.

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66. Agreement between General Paper Company and Tomahawk Pulp & Paper Company, dated December 13th, 1904, covering period from July 5th, 1905, to July 5th, 1910.

No.

67. Agreement between General Paper Company and Dells Paper & Pulp Company, dated July 5th, 1900 covering period of five years from date.
68. Agreement between General Paper Company and Dells Paper & Pulp Company, dated July 28, 1904 covering period from July 5th, 1905 to July 5th, 1910.
69. Resolution of board of directors of Dells Paper & Pulp Company, dated July 11th, 1904.
70. Agreement between General Paper Company and Falls Manufacturing Company, dated July 5th, 1900 covering period of five years from date.
71. Resolution of board of directors of Falls Manufacturing Company, June 8th, 1900.
72. Agreement between General Paper Company and Hennepin Paper Company, dated July 5th, 1900 for the term of one year.
73. Agreement between General Paper Company and Hennepin Paper Company, dated July 5th, 1901 for the term of four years. Also resolution of board of directors of Hennepin Paper Company, dated July 12th, 1901.
74. Agreement between General Paper Company and Hennepin Paper Company, dated October 17th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
75. Resolution of board of directors of Hennepin Paper Company, dated October 17th, 1904.
76. Agreement between General Paper Company and Itasca Paper Company, dated February 5th, 1902 covering period of five years from date.
77. Resolution of board of directors of Itasca Paper Company, May 1st, 1902.
78. Agreement between General Paper Company and Itasca Paper Company, July 6th, 1904 covering period from July 5th, 1905 to July 5th, 1910.

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79. Agreement between General Paper Company and Northwest Paper Company, April 8, 1902 covering period from date to July 5, 1905.
80. Resolution of board of directors of Northwest Paper Company, April 8th, 1902.
81. Agreement between General Paper Company and Northwest Paper Company, June 4th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
82. Resolution of board of directors of Northwest Paper Company, May 11th, 1904.
83. Agreement between General Paper Company and Petoskey Fibre Paper Company, dated July 14th, 1902 covering period from date to July 5th, 1905.

No.

84. Resolution of board of directors of Petoskey Fibre Paper Company, July 7th, 1902.
 85. Agreement between General Paper Company and Riverside Fibre & Paper Company, dated December 13th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
 86. Resolution of board of directors of Riverside Fibre & Paper Company dated December 3d, 1904.
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 88. Resolution of board of directors of Riverside Fibre & Paper Company, dated November 10th, 1902.
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93. Agreement between General Paper Company and Menasha Paper Company, dated December 13th, 1904 covering period from July 5th, 1905 to July 5th, 1910.
 94. Agreement between General Paper Company and Flambeau Paper Company, dated December 1st, 1902 covering period from date to July 5th, 1905.
 95. Resolution of board of directors of Flambeau Paper Company, dated December 2d, 1902.
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 97. Resolution of board of directors of Flambeau Paper Company, dated June 6th, 1904.
 98. Agreement between General Paper Company and Rhinelander Paper Company, dated August 31st, 1904 covering period from date to July 5th, 1910.
 99. Agreement between General Paper Company and Consolidated Water-Power & Paper Company, dated July 13th, 1904 covering period from date to July 5th, 1910.
 100. Resolution of board of directors of Consolidated Water-Power & Paper Company, dated June 9th, 1904.
 101. Circular letter issued by General Paper Company to the trade, dated July 5th, 1900.

No.

102. Memorandum of first payments on account of subscriptions to stock of General Paper Company (being 22½ % of par value of subscription).

103. *Subpoena duces tecum* to L. M. Alexander and John A. Davis.

Exhibits 104 to 122 inclusive, 124, 126 to 135 inclusive are agreements between the General Paper Company and various publishers for the sale of print paper. No. 133 is the earliest form. Nos. 115, 118 and 134 are early forms varying in some respects from No. 133. All the others are substantially alike with very slight verbal changes in the printed blank. Each covers a period of one year.

1273

104. Agreement between G-P Co. and Duluth News Tribune Co.,
May 7, 1902.

105. Do. April 3, 1903.

106. Do. April 23, 1904.

107. Do. April 23, 1904.

108. Do. April 23, 1904.

109. Do. April 3, 1905.

110. Agreement bet. G-P-Co. and Duluth Printing & Pub. Co.,
May 7, 1902.

111. Do. April 23, 1903.

112. Do. April 6, 1904.

113. Do. May 5, 1905.

114. Agreement bet. G-P-Co. and Journal Printing Co. (Mpls.)
April 13, 1905.

115. Do. April 15, 1902.

116. Do. April 17, 1903.

117. Do. April 22, 1904.

118. Agreement bet. G-P-Co. and Pioneer Press Co. (St. Paul)
April 18, 1902.

119. Do. April 16, 1903.

120. Do. April 9, 1904.

121. Do. April 13, 1905.

122. Do. April 13, 1905.

123. Letter, General Paper Co. to George W. Webb, Kansas City, Mo.,
dated September 28, 1904.

124. Agreement bet. G-P-Co. and Drover's Telegram Co.,
Sept. 28, 1904.

125. Letter amending preceding agreement, Sept. 28, 1904.

126. Agreement bet. G-P-Co. and Reporter Publishing Co.,
Sept. 28, 1904.

127. Agreement bet. G-P-Co. and Daily News Pub. Co. (Omaha)
Aug. 4, 1902.

128. Do. July 8, 1903.

129. Agreement bet. G. P. Co. and Des Moines News Co.,
Aug. 4, 1902.

130. Do. July 8, 1903.

No.

131. Agreement bet. G-P-Co. and Daily News Co. (Minneapolis)
June 8, 1903.
132. Agreement bet. G-P-Co. and Daily News Pub. Co. (St. Paul)
July 23, 1902.
133. Agreement bet. G-P-Co. and Dispatch Printing Co. (St. Paul)
April 20, 1901.
134. Do. Do. April 9, 1902.
135. Do. Do. April 22, 1903.

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136. Supplementary agreement and agreement between General Paper Co. and Dispatch Printing Co. dated April 22, 1904.
137. List of defendant companies, except General Paper Company.
138. Copy of written memorandum of proposed agreement between Manufacturers Paper Co. and General Paper Co., dated January 2, 1902.

1274½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Co. *et al.*, defendants. *In re* Alexander, Whiting and Stuart. Stipulation and schedule of exhibits. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 21, 1905. Edw. Kurtz clerk by F. H. Kurtz deputy.

1275 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that the foregoing pages (numbered from 1 to — inclusive) contain a true and complete transcript of the record and proceedings had in said court in the cause entitled: The United States of America, complainant, vs. The General Paper Company *et al.*, defendants, in the matter of the petition of the United States of America for an order directing L. M. Alexander, George A. Whiting and W. Z. Stuart to answer certain questions, comply with certain requests and produce certain books, records, papers, reports and contracts for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Milwaukee in the eastern district of Wisconsin in the seventh circuit this 16th day of August in the year of our Lord one thousand nine hundred and five and of the Independence of the said United States the one hundred and thirtieth.

[Seal U. S. Circuit Court, Eastern District Wisconsin.]

EDWARD KURTZ, Clerk.

1276

Citation.

UNITED STATES OF AMERICA, ss :

To the United States of America, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 2nd day of September, A. D. 1905, pursuant to an order granting an appeal from an order and decree filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein Lewis Alexander is the appellant and you are the appellee, to show cause, if any there be, why the order and decree mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge of the circuit court of the United States for the eastern district of Wisconsin this 3rd day of August, A. D. 1905.

WM. H. SEAMAN,
Circuit Judge.

1277 [Endorzed :] Citation. Appeal of L. M. Alexander.

Service admitted this 4th day of August, 1905. Frank B. Kellogg, Robert E. Olds, solicitors for petitioner and appellee. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78.

1278

Citation.

UNITED STATES OF AMERICA, ss :

To the United States of America, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 2nd day of September, A. D. 1905, pursuant to an order granting an appeal from an order and decree filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein George A. Whiting is the appellant and you are the appellee, to show cause, if any there be, why the order and decree mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge of the circuit court of the United States for the eastern district of Wisconsin this 3rd day of August, A. D. 1905.

WM. H. SEAMAN,
Circuit Judge.

1279 [Endorsed:] Citation. Appeal of George A. Whiting. Service admitted this 4th day of August, 1905. Frank B. Kellogg, Robert E. Olds, solicitors for petitioner and appellee. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

1280

Citation.

UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 2nd day of September, A. D. 1905, pursuant to an order granting an appeal from an order and decree filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein William Z. Stuart is the appellant and you are the appellee, to show cause, if any there be, why the order and decree mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge of the circuit court of the United States for the eastern district of Wisconsin this 3rd day of August, A. D. 1905.

WM. H. SEAMAN,
Circuit Judge.

1281 [Endorsed:] Citation. Appeal of W. Z. Stuart. Service admitted this 4th day of August, 1905. Frank B. Kellogg, Robert E. Olds, solicitors for petitioner and appellee. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

1282

Citation.

UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 2nd day of September, A. D. 1905, pursuant to an order granting an appeal from an order and decree filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin wherein General Paper Company is the appellant and you are the appellee to show cause, if any there be, why the order and decree mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge of the circuit

court of the United States for the eastern district of Wisconsin this 3rd day of August, A. D. 1905.

WM. H. SEAMAN,
Circuit Judge.

1283 [Endorsed:] Citation. Appeal of General Paper Company Service admitted this 4th day of August, 1905. Frank B. Kellogg, Robert E. Olds, solicitors for petitioner and appellee. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78.

1284 Supreme Court of the United States.

LEWIS M. ALEXANDER, Appellant,	}
vs.	
THE UNITED STATES OF AMERICA, Appellee.	}
GEORGE A. WHITING, Appellant,	
vs.	}
THE UNITED STATES OF AMERICA, Appellee.	
WILLIAM Z. STUART, Appellant,	}
vs.	
THE UNITED STATES OF AMERICA, Appellee.	}
GENERAL PAPER COMPANY, Appellant,	
vs.	}
THE UNITED STATES OF AMERICA, Appellee.	

It is hereby stipulated and agreed between the appellants above named and the appellee above named, that in the printed transcript of the record certified to the Supreme Court of the United States by the clerk of the circuit court of the United States for the eastern district of Wisconsin upon said appeals, it will be necessary to print only those portions of said transcript designated in the instructions as to printing annexed to this stipulation, the said appellants severally reserving the right and intending to rely for the reversal of the order appealed from upon each and all of the errors set forth in his several assignment of errors contained in said transcript so certified as aforesaid.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for Appellants.

JAMES M. BECK,
FRANK B. KELLOGG,
ROBERT E. OLDS, Solicitors for Appellee.

JAMES G. FLANDERS,
WILLIAM BRACE,
Of Counsel for Appellants.

1285 Appeals of L. M. Alexander, G. A. Whiting, W. Z. Stuart, and General Paper Company.

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1287 [Endorsed:] Supreme Court of the United States. L. M. Alexander, appellant, vs. United States of America, appellee. George A. Whiting, appellant, vs. United States of America, appellee. William Z. Stuart, appellant, vs. United States of America, appellee. General Paper Company, appellant, vs. United States of America, appellee. Stipulation and instructions for printing. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis.

1288 [Endorsed:] File Nos. 19883-'4-'5 & '6. Supreme Court U. S. October term, 1905 Term Nos. 381-382-383 & 384 L. M. Alexander *et al.*, appellants, vs. The United States. Stipulation and instructions for printing record. Filed August 28, 1905.

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(19,887.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 385.

E. T. HARMON AND GENERAL PAPER COMPANY,
APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF WISCONSIN.

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- 1 Circuit Court of the United States for the Eastern District of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss:

At a special term of the circuit court of the United States for the eastern district of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday (being the third day) of July, A. D. 1905—present and presiding the Honorable William H. Seaman, circuit judge—among other the following proceedings were had, to-wit:

- 2 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

- 3 Be it remembered that heretofore to-wit: on the 27th day of June, A. D. 1905, came the complainant, The United States of America, by its solicitors Messrs. James M. Beck and Frank B. Kellogg, and filed its præcipe for a subpoena to be issued for the attendance of E. T. Harmon and others before Robert S. Taylor, special examiner, at Milwaukee, Wisconsin, for the purpose of taking their testimony in said cause. Whereupon a subpoena issued as follows:—

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } ss :

[L. s.] The President of the United States of America to E. T. Harmon, Grand Rapids, Wis.; L. M. Slaughter, Grand Rapids; John O'Day, Grand Rapids or Merrill, Wis.; Geo. W. Mead, Grand Rapids, Greeting :

You and each of you are hereby commanded that laying aside all business and excuses, you and each of you be and appear in your proper persons, before Robert S. Taylor, special examiner of the circuit court of the United States of America, for the district of Minnesota, at room 314 Federal building at Milwaukee, in the said district, on the 7th day of July, 1905, by 10 o'clock in the forenoon of the same day, to testify, all and singular, those things which you or either of you know in a certain cause now depending in the said circuit court of the United States between The United States of America, plaintiff, and General Paper Company *et al.*, defendants on the part of the complainant, a civil cause. And this you or either of you are not to omit under the penalty which may ensue.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Milwaukee, the 27th day of June in the year of our Lord, one thousand nine hundred and five and of the Independence of the United States the 129th.

(Signed)

EDWARD KURTZ, Clerk,
By F. H. KURTZ, Deputy.

Marshal's Return of Service.

UNITED STATES OF AMERICA, }
Western District of Wisconsin, } ss :

I hereby certify and return that I served the within named E. T. Harmon, L. M. Slaughter and John O'Day, by showing them this subpoena, and reading the same in their hearing and leaving with each of them personally a copy of same, viz: E. T. Harmon and L. M. Slaughter at Grand Rapids, Wood county, and John O'Day at Merrill, Lincoln county in the said western district of Wisconsin, this 5th day of July, 1905.

(Signed)

CHARLES LEWISTON,
U. S. Marshal,
By H. O. JONAS, Deputy.

July 8, 1905.—Petition of the complainant by its solicitors praying an order requiring the said E. T. Harmon to appear before the court and show cause why he should not answer the questions and produce the books and papers for inspection mentioned in said petition, which petition is as follows:—

5 In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,
vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HEN-
nepin Paper Company, Wolf River Paper and Fiber Company,
Atlas Paper Company, Kimberly and Clark Company, River-
side Fibre and Paper Company, Wausau Paper Mills Com-
pany, Centralia Pulp and Water Power Company, Combined
Locks Paper Company, Dells Paper and Pulp Company, Grand
Rapids Pulp and Paper Company, Menasha Paper Company, The
C. W. Howard Company, The Nekoosa Paper Company, The Falls
Manufacturing Company, Flambeau Paper Company, The
John Edwards Manufacturing Company, The Wisconsin River
Paper and Pulp Company, Tomahawk Pulp and Paper Com-
pany, Northwest Paper Company, Consolidated Water Power
and Paper Company, The Petoskey Fibre Paper Company,
Rhineland Paper Company, Defendants.

Petition for Order to Show Cause.

To the honorable the judges of the United States circuit court for the eastern district of Wisconsin:

6 Your petitioner, The United States of America, petitioner in the above entitled cause, respectfully says:

First. That the above cause is a proceeding by way of petition brought in the United States circuit court for the District of Minnesota, by the United States of America against the above named defendants, under and pursuant to the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;"

That in and by the petition in said cause, a copy of which is hereto attached, referred to and made a part hereof for greater certainty, it is among other things charged that the above named defendants did, on or about the year 1900, in the manner and form mentioned in said petition, enter into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States and to control, regulate and monopolize said trade and commerce in this; that the said defendants, save and excepting the General Paper Company, combined and conspired together to restrain and eliminate competition among themselves by and through the organization of a selling agent known as the General Paper Company, another party defendant, which General Paper Company was by various contracts and agreements thereupon made with the said other defendants, given full power and control

over the product and the disposition thereof of the defendants so contracting with it.

Second. That the said cause is at issue upon petition, answers and replication; that the defendants in said cause, as more particularly appears by their respective answers, copies of which are hereto attached, referred to and made a part hereof for greater certainty, have denied the making of or entering into any combination or conspiracy as alleged in the petition, and have denied that the defendants other than the General Paper Company have ever conferred upon the said defendant General Paper Company any power or control over their output, or any power to fix or determine prices and terms of sale of such output.

7 Third. That a special examiner has been appointed by the United States circuit court for the district of Minnesota, with full power and authority, according to the rules and practice in such cases made and provided, to hold hearings and receive testimony in behalf of either party at such times and places within or without the district of Minnesota as he may designate and appoint; and that, pursuant to the power and authority so vested in him, said special examiner did duly make, enter, file and serve upon the counsel for the respective parties to the cause, an order for the taking of testimony in behalf of the petitioner in said cause, before him, the said examiner, at room 314 in the Federal building in the city of Milwaukee and State of Wisconsin, within the eastern district of Wisconsin, at ten o'clock in the forenoon of the 16th day of May, 1905, said hearing to be continued at said place from day to day as thereafter by said examiner ordered; that in accordance with said order of said examiner, the taking of testimony was before him begun at the time and place above mentioned, and continued from day to day and from time to time as more particularly appears by the certified copy of the proceedings had before said examiner now on file in the office of the clerk of the United States circuit court for the eastern district of Wisconsin.

Fourth. That at the said hearing before the said examiner, pursuant to a subpoena theretofore issued by order of the United States circuit court for the eastern district of Wisconsin, out of the office of the clerk of said court, the witness E. T. Harmon duly appeared before the said examiner, on the 7th day of July, 1905; that the said witness, in the course of his examination by counsel for the petitioner, did, contrary to law and to the practice of this court, refuse to answer certain questions put to him and to produce certain papers orders and acceptances, the said refusals on the part of said witness E. T. Harmon being particularly set forth in the schedule of refusals hereto attached, referred to and made a part hereof; that all of the questions which the said witness E. T. Harmon has refused

8 and does still refuse to answer are, as your petitioner verily believes, perfectly proper, competent and material to be answered, and all of the requests to produce papers, orders and acceptances, as appears more particularly by the schedule of refusals hereto

annexed, which requests the said witness E. T. Harmon has refused and does still refuse to answer and comply with are, as your petitioner verily believes, perfectly proper, competent and material to be complied with, in order that all material facts relating to the charge set out in the bill of complaint or petition may fully appear and be laid before the court for the proper determination of said cause.

Fifth. That in view of the persistent refusals on the part of said witness E. T. Harmon to answer the questions and comply with the requests as aforesaid, your petitioner, by its counsel, has deemed it necessary and expedient to suspend the said examination of witnesses before said examiner, and make application to the honorable judges of the circuit court of the United States for the eastern district of Wisconsin for an order requiring the said witness E. T. Harmon to appear before them, the said honorable judges of the United States circuit court for the eastern district of Wisconsin, to show cause why he should not be required to answer the said questions and to comply with the said requests above referred to; and, to that end, your petitioner has had filed in the office of the clerk of the United States circuit court for the eastern district of Wisconsin a complete transcript of all of the testimony taken and exhibits offered in said cause up to the time of the suspension of said examination before said examiner on Friday the seventh day of July 1905, duly certified by said examiner as a true and correct copy of all of the proceedings had before him upon the subject of the examination, which said transcript of testimony and exhibits so filed in the office of the clerk of the United States circuit court for the eastern district of Wisconsin, and certified by said examiner, is hereby referred to and made a part of this petition.

9 Sixth. Wherefore, your petitioner respectfully prays that an order to show cause may issue out of the United States circuit court for the eastern district of Wisconsin, directing the said witness E. T. Harmon to be and appear before the said United States circuit court for the eastern district of Wisconsin at such time and place as may by said order be fixed, then and there to show cause why he should not answer the said questions, produce the said papers, orders and acceptances and comply with the said requests hereinabove referred to; or, in the event of his continued refusal so to answer, produce or comply, why he should not stand committed for contempt of the said court; and for such other and further relief as to the court may seem just and proper.

And your petitioner will ever pray.

(Signed)

FRANK B. KELLOGG,
JAMES M. BECK,
ROBERT E. OLDS,

Solicitors for Petitioner, The United States of America.

(Signed) FRANK B. KELLOGG,

Special Assistant Attorney
General of the United States.

STATE OF WISCONSIN, }
County of Milwaukee, } ss:

On this 7th day of July, 1905, personally appeared before me Robert E. Olds, to me known to be one of the solicitors for the petitioner in the above entitled cause, and being first duly sworn, the said Robert E. Olds said that he has read the foregoing petition and that the facts therein stated are true.

(Signed)
[NOTARIAL SEAL.]

MARGARET McANENY,
Notary Public, Milwaukee
County, Wisconsin.

My commission expires May 16, 1909.

10

Schedule of Refusals.

(References are to the typewritten testimony.)

Witness E. T. HARMON :

1. Refusal to answer the second question found on page 649 of the typewritten testimony.
2. Refusal to answer the fourth question found on page 651 of the typewritten testimony.
3. Refusal to answer the last question found on page 651 of the typewritten testimony.
4. Refusal to answer the second question found on page 652 of the typewritten testimony.
5. Refusal to answer the third question found on page 652 of the typewritten testimony.
6. Refusal to answer the fifth question found on page 652 of the typewritten testimony.
7. Refusal to answer the first question found on page 653 of the typewritten testimony.
8. Refusal to answer the second question found on page 653 of the typewritten testimony.
9. Refusal to answer the third question found on page 653 of the typewritten testimony.
10. Refusal to answer the fourth question on page 653 of the typewritten testimony.
11. Refusal to answer the fifth question found on page 653 of the typewritten testimony.
12. Refusal to answer the first question found on page 654 of the typewritten testimony.
13. Refusal to answer the second question found on page 654 of the typewritten testimony.
14. Refusal to answer the last question beginning on page 654 of the typewritten testimony.

15. Refusal to answer the first complete question found on page 655 of the typewritten testimony.
16. Refusal to answer the ninth question found on page 656 of the typewritten testimony.
17. Refusal to answer the tenth question found on page 656 of the typewritten testimony.
- 11 18. Refusal to answer the first question found on page 657 of the typewritten testimony.
19. Refusal to answer the second question found on page 657 of the typewritten testimony.
20. Refusal to answer the third question found on page 657 of the typewritten testimony.
21. Refusal to answer the fourth question found on page 657 of the typewritten testimony.
22. Refusal to answer the fifth question found on page 657 of the typewritten testimony.
23. Refusal to answer the first question found on page 658 of the typewritten testimony.
24. Refusal to answer the second question found on page 658 of the typewritten testimony.
25. Refusal to answer the third question found on page 658 of the typewritten testimony.
26. Refusal to answer the fourth question found on page 658 of the typewritten testimony.
27. Refusal to answer the fifth question found on page 658 of the typewritten testimony.
28. Refusal to answer the first question found on page 660 of the typewritten testimony.
29. Refusal to answer the second question found on page 660 of the typewritten testimony.
30. Refusal to answer the second question found on page 661 of the typewritten testimony.
31. Refusal to answer the last question found on page 661 of the typewritten testimony.

Here follow copies of the bill of complaint, of The United States of America against The General Paper Company and others, and answers thereto mentioned in said petition.

11a In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

VS.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

Petition.

William H. Moody, Attorney General of the United States.

Frank B. Kellogg, James M. Beck, special Assistant Attorneys General of the United States.

Charles C. Haupt, attorney of the United States for the district of Minnesota.

11b In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

11c

Petition.

To the judges of the circuit court of the United States for the district of Minnesota, third division :

And now comes the United States of America by Charles C. Haupt, the United States attorney for the district of Minnesota, acting under the direction of the Attorney General of the United States, and brings this its proceeding by way of petition against General Paper Company, the Itasca Paper Company, Hennepin Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, the C. W. Howard Company, the Nekoosa Paper Company, the Falls Manufacturing Company, Flambeau Paper Company, the John Edwards Manufacturing Company, the Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, the Petoskey Fibre Paper Company, and the Rhinelander Paper Company, corporations

11d duly organized as hereinafter more particularly alleged, and for its bill of complaint, on information and belief, complains and alleges

I.

That each of the following named corporations defendants herein was, during all the times hereinafter stated, and still is, a corpo-

ration duly created and organized under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business in said State, as hereinafter stated after the name of each corporation, to-wit :

- Atlas Paper Company, Appleton, Wisconsin,
- Kimberly and Clark Company, Neenah, Wisconsin,
- Riverside Fibre and Paper Company, Appleton, Wisconsin,
- Wausau Paper Mills Company, Brokaw, Wisconsin,
- Centralia Pulp and Water-Power Company, Centralia, Wisconsin,
- Combined Locks Paper Company, Combined Locks, Wisconsin,
- Dells Paper and Pulp Company, Eau Claire, Wisconsin,
- 11e Grand Rapids Pulp and Paper Company, Grand Rapids, Wisconsin,
- Menasha Paper Company, Menasha, Wisconsin,
- The Nekoosa Paper Company, Nekoosa, Wisconsin,
- The Falls Manufacturing Company, Oconto Falls, Wisconsin,
- Flambeau Paper Company, Park Falls, Wisconsin,
- The John Edwards Manufacturing Company, Port Edwards, Wisconsin,
- The C. W. Howard Company, Menasha, Wisconsin,
- Wolf River Paper and Fiber Company, Richmond, Wisconsin,
- The Wisconsin River Paper and Pulp Company, Plover, Wisconsin,
- Tomahawk Pulp and Paper Company, Park Falls, Wisconsin,
- Consolidated Water Power and Paper Company, Grand Rapids, Wisconsin,
- Rhineland Paper Company, Rhineland, Wisconsin.

That each of the following named corporations, defendants 11f herein, was, during all the times hereinafter stated, and still is, a corporation duly created and organized under and by virtue of the laws of the State of Minnesota, with its principal office and place of business in said State, as hereinafter stated after the name of each corporation, to-wit :

- The Itasca Paper Company, Grand Rapids, Minnesota.
- Hennepin Paper Company, Little Falls, Minnesota.
- Northwest Paper Company, Cloquet, Minnesota.

That the defendant The Petoskey Fibre Paper Company is, and during all the times hereinafter stated was, a corporation duly created and organized under the laws of the State of Michigan, with its principal office and place of business at Petoskey, Michigan.

II.

That the corporations named in the paragraph next preceding are, and during all times hereinafter stated were, engaged in manufacturing news print, manilla, fibre, and other papers, at mills situated at their respective principal places of business in the States aforesaid (the Kimberly and Clark Company having in addition, mills at Kimberly, Wisconsin, and Quinnesec, Michigan), and in selling and shipping the products aforesaid to

dealers and owners and managers of newspapers and other consumers in those and other States, to-wit, the States of Illinois, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Montana, Utah, Colorado, Kansas, Nebraska, Missouri and other States west of the Mississippi river.

III.

That prior to the year 1900, and, more particularly prior to about the month of May, 1900, when the defendant, The General Paper Company, was organized, as hereinafter set forth, the aforesaid corporations, which comprise substantially all of the manufacturers of paper in the territory defined in the paragraph next preceding, were competing with each other and with the defendant The Manufacturers Paper Company in the sale and shipment of news print, manilla, fibre, and other papers, in and throughout that territory.

IV.

That in or about the month of May, in the year 1900, the defendants Kimberly and Clark Company, Atlas Paper Company, Combined Locks Paper Company, The C. W. Howard Company, 11h The John Edwards Manufacturing Company, The Nekoosa Paper Company, Centralia Pulp and Water-Power Company, Grand Rapids Pulp and Paper Company, The Wisconsin River Paper and Pulp Company, Wausau Paper Mills Company, Tomahawk Paper and Pulp Company, Dells Paper and Pulp Company, The Falls Manufacturing Company, and The Hennepin Paper Company, in violation of the provisions of sections 1 and 2, respectively, of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stats. 209), entered into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several States, and to control, regulate and monopolize said trade and commerce and thereby, in conjunction and alliance with defendants who subsequently joined in the aforesaid agreement, combination and conspiracy as set forth in the paragraph next succeeding, do now control, regulate and monopolize and restrain the trade and commerce not only in the manufacture of news print, manilla, fibre, and other papers, but also the distribution, sale and shipment thereof among and throughout the States of the Union aforesaid and all States west of the Mississippi river by means 11i and in the manner following, to-wit: on or about the 26th day of May, 1900, the defendants last above named caused to be organized, under the laws of the State of Wisconsin, a corporation styled the General Paper Company, with a capital stock of one hundred thousand dollars, divided into one thousand shares, which were distributed among, and are now owned and held by, the said last named defendants and the defendants that subsequently joined in the aforesaid combination and conspiracy, as hereinafter set forth,

in proportions based, as your petitioner is informed, upon the average daily output of the mills of each defendant, which corporation, by its articles of incorporation, is authorized to become, as its principal business, the sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products by mills in the State of Wisconsin or elsewhere; and thereupon, in pursuance of a common plan and understanding, each and all of the aforesaid defendants entered into a contract and agreement with the said General Paper Company making it the exclusive selling agent for their papers and paper products, and conferring upon it absolute power to control and restrict the output of their mills, fix the price of all papers sold throughout the States aforesaid, and determine to whom and the terms and conditions upon which paper shall be sold, and into what
 11j States and places it shall be shipped, and what publishers and other customers each mill shall supply.

V.

That at different times thereafter the remaining defendants engaged in the manufacture and sale of paper in the territory aforesaid, namely, The Northwest Paper Company, The Consolidated Water-Power and Paper Company, The Itasca Paper Company, The Petoskey Fibre Paper Company, The Menasha Paper Company, The Rhinelander Paper Company, The Flambeau Paper Company, and The Wolf River Paper and Fiber Company, entered into and became parties to the aforesaid agreement, combination and conspiracy; that is to say, they each and all entered into a contract and agreement with the said General Paper Company, making it the exclusive selling agent for their papers and paper products, and conferring upon it absolute power to control and restrict the output of their mills, fix the price of all paper sold throughout the States aforesaid, and determine to whom and the terms and conditions upon which paper shall be sold, and into what States and places it shall be shipped, and what publishers and other customers each mill shall supply; and in turn the defendants last above named became
 11k stockholders in the said General Paper Company on the basis described in the last preceding paragraph.

VI.

That each of the said defendant companies for which the General Paper Company became, in the manner aforementioned, and is now, the general selling agent, agreed to and does pay to the said General Paper Company, for acting as its selling agent, a certain percentage upon all sales of paper manufactured by it, and that out of the amount received from this source the said General Paper Company agreed to, and does, deduct its annual expenses for the sale of the product, and the balance is divided between the said defendant companies as stockholders of the said General Paper Company.

VII.

That during all the times herein stated the Manufacturers Paper Company has been and now is a corporation duly created and organized under and by virtue of the laws of the State of New York, with its principal place of business in the city of Chicago in the State of Illinois, and that from about the year 1897 down to

111 sometime during the year 1902 (when it entered into the combination with the General Paper Company as hereinafter alleged) it was engaged in the paper business at Chicago acting as sales agent for various manufacturers of paper to the complainant unknown, for the sale of news print and other papers to the various owners and publishers of newspapers and other consumers and dealers in the States and territory hereinbefore described.

That about the year 1902 the said Manufacturers Paper Company entered into and became a party to the said combination and conspiracy, but upon exactly what terms and conditions and considerations complainant is unable to state, except that it agreed with the said General Paper Company not to compete with the said company for any business in the territory of Wisconsin or States west of the Mississippi, or to offer any paper from the East to any customer of the General Paper Company either directly or indirectly.

That thereafter and to the present time the said Manufacturers Paper Company has been a party to said combination and conspiracy and has not competed for business in the said territory.

VIII.

11m That by virtue of and through the instrumentality of the agreement, combination and conspiracy hereinbefore described, all competition in the manufacture, sale and distribution of news print, manilla, fibre and other papers in the States hereinbefore described and in all the other States west of the Mississippi river, has been suppressed and the price of all paper products greatly increased, that of news print paper in the territory aforesaid having been increased about fifty per cent.

And that no dealers or newspapers or other consumers in said territory, with the exception of certain newspaper publishers in St. Louis and Chicago, can purchase any paper except directly or indirectly through the General Paper Company, and then only upon prices and terms dictated by the latter.

In consideration whereof, and inasmuch as adequate relief in the premises can only be obtained in this court, the United States of America prays your honors to order, adjudge and decree that the combination or conspiracy hereinbefore described is unlawful, and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States, and in violation of the act of Congress of July 2, 1890, entitled: "An act to protect trade and commerce against unlawful restraints and monop-

olies," and that the defendants and each and every one of them, and their officers, directors, stockholders, agents and servants, and each and every one of them, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same, and, in addition thereto, that the several defendants be respectively enjoined as follows:

First. That the defendant The General Paper Company be enjoined from acting as the sales agent and fixing the price at which the news print, manilla, fibre and other paper of the various defendant corporations shall be sold, and the persons, corporations and newspapers to which it shall be sold, and into what States it shall be shipped and sold.

Second. That each and every of the other defendants be enjoined and restrained from continuing the said arrangement with the said General Paper Company, and from making the said General Paper Company the exclusive selling agent of the said defendants and each of them, and from authorizing the said General Paper Company to restrict the output, fix the price of and terms of sale of the product of each of the defendants' mills and manufactories, or to dictate and determine the persons, corporations or newspapers to which it shall be sold, and the States into which the same shall be shipped and sold.

11o The United States prays for such other and further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpoena directed to said defendants, General Paper Company, The Itasca Paper Company, Hennepin Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, The Petoskey Fibre Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Rhinelander Paper Company, and each and every of them, commanding them and each of them to appear herein and answer (but not under oath,

11p answer under oath being hereby expressly waived) the allegations contained in the foregoing petition, and abide by and perform such order or decree as the court may make in the premises, and upon the final hearing hereof to permanently enjoin the defendants as hereinbefore prayed, and pending the final hearing of this case to cause a temporary restraining order to issue, enjoining

the defendants and each of them and each of their officers, agents and servants, as hereinbefore prayed.

_____,
Attorney of the United States for the District of Minnesota.

_____,
Attorney General of the United States.

_____,
Special Assistant Attorneys General of the United States.

11g UNITED STATES OF AMERICA, }
District of Minnesota, Third Division, } ss :

Charles C. Haupt, being duly sworn, says that he is the United States attorney for the district of Minnesota, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the said bill of complaint for The United States of America, the complainant therein by the Attorney-General of the United States.

_____,
Attorney of the United States for the District of Minnesota.

Subscribed in my presence and sworn to before me this — day of December, A. D. 1904.

_____,
Clerk of the United States Circuit Court
for the District of Minnesota.

11r In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HENNEPIN Paper Company, Wolf River Paper and Fiber Company, Atlas Paper Company, Kimberly and Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, Manufacturers Paper Company, The Petoskey Fibre Paper Company, Rhinelander Paper Company, Defendants.

11s The joint and several answers of The General Paper Company, The Itasca Paper Company, Hennepin Paper Company, Wolf River Paper & Fibre Company, Atlas Paper Company, Kimberly & Clark Company, Riverside Fibre and Paper Company, Wausau Paper Mills Company, Centralia Pulp and Water-Power Company, Combined Locks Paper Company, Dells Paper and Pulp Company, Grand Rapids Pulp and Paper Company, Menasha Paper Company, The C. W. Howard Company, The Nekoosa Paper Company, The Falls Manufacturing Company, Flambeau Paper Company, The John Edwards Manufacturing Company, The Wisconsin River Paper and Pulp Company, Tomahawk Pulp and Paper Company, Northwest Paper Company, Consolidated Water Power and Paper Company, and The Petoskey Fibre Paper Company to the petition and bill of complaint of The United States of America, the complainant.

These defendants now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said petition and bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally answering, say:

First. They severally admit their incorporation and places of business respectively, as alleged in the first paragraph of said petition and complaint.

Second. They admit the allegations contained in the second paragraph of said petition and complaint.

Third. They admit that prior to the year 1900 and prior to the month of May, 1900, these defendants and the other defendants named in the said first paragraph of said petition and complaint, were competing with each other and with the defendant Manufacturers Paper Company, in the sale and shipment of news print, manila, fibre and other papers, in and throughout the territory mentioned and described in the second paragraph of said petition and complaint, and these defendants allege that they have ever since continued to so compete and are now so competing. These defendants deny that they, with the other defendants named in the said petition and complaint, comprise substantially all of the manufacturers of paper in the territory defined in the second paragraph of said petition and complaint, but on the contrary allege that there are now and have been, since prior to the year 1900, a number of other manufacturers of paper in said territory, competing with each other and with these defendants and the other defendants named in said bill and complaint.

Fourth. The defendants Kimberly & Clark Company, Atlas Paper Company, Combined Locks Paper Company, The C. W. Howard Company, The John Edwards Manufacturing Company, The Ne-koosa Paper Company, Centralia Pulp and Water-Power Company, Grand Rapids Pulp and Paper Company, The Wisconsin River Paper and Pulp Company, Wausau Paper Mills Company, Tomahawk Paper and Pulp Company, Dells Paper and Pulp Company, The Falls Manufacturing Company, and The Hennepin Paper Company, and upon information and belief the other of these answering defendants likewise deny, that the defendants specifically named in the fourth paragraph of said petition and complaint, in or about the month of May, 1900, or at any other time, entered into an agreement, combination or conspiracy with each other, or into any agreement, combination or conspiracy whatever with any person or corporation whatever, to restrain the trade or commerce among the several States, or to restrain the trade or commerce among any States whatever or within any State whatever, or to control or monopolize said trade or commerce, and that they or any of these answering defendants have ever, at any time, made, formed, or entered into any such agreement, combination or conspiracy, and these answering defendants deny that they or any of them do now control, monopolize or restrain the trade and commerce between any States whatever or within any State, either in the manufacture of news print, manila, fibre or other paper, or in the distribution, sale or shipment thereof among or throughout the States of the Union, or among or between any States whatever, or within the limits or border of any State whatever, by any means or in any manner whatever.

These defendants admit that on or about the 26th day of May, 1900, a corporation styled the "General Paper Company" was organized under the laws of the State of Wisconsin, with a capital

stock of \$100,000, divided into 1,000 shares, which corporation, by its articles of incorporation, was authorized to become, as its principal business, the sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products, by mills of the State of Wisconsin or elsewhere.

They further admit that thereafter each of these answering defendants other than said General Paper Company, separately entered into a contract with said General Paper Company, making said General Paper Company its exclusive selling agent for a definite period specified in such contract, to sell certain specified grades or description of paper manufactured by the other party to such contract, to-wit, the mill so contracting, such grades or descriptions of paper comprising all box lining, hanging, novel, print, fibre and manila papers manufactured by the defendant mill so contracting.

But they deny that any defendant mill, by such contract or agreement or otherwise, ever conferred upon said General Paper Company the power to control or restrict the output of the defendant mill or mills so contracting, or to fix the price of all or any papers sold throughout the States aforesaid, or to determine to whom or the prices or conditions upon which the paper manufactured by such defendant mills or by any of them should be sold, or into what States or places it should be shipped or what publishers or other customers each mill should supply.

And these defendants allege that under such contracts, it was made the duty of the said General Paper Company to use its best efforts to keep the mill or mills owned or controlled by the other party to each of such contracts, supplied with orders for paper
11v at the best prices reasonably obtainable, and to submit all orders so obtained to the mill for which the same was taken, for its approval or rejection, and to transmit all orders received by or offered to it for a particular mill to the mill selected by the customer for the approval or rejection of such mill, to the end that each of such mills might be supplied with orders to the full extent of its capacity and the demands of the trade supplied, in the most prompt and efficient manner possible.

Save as aforesaid, these defendants deny each and every matter, allegation and charge in the fourth paragraph of said petition and complaint contained.

Fifth. They admit that each of the defendants for which the General Paper Company acts as sales agent, has agreed to and does pay to the said General Paper Company, for acting as its sales agent, a certain percentage upon all sales of paper manufactured by it, which said percentage is fixed by the terms of the aforesaid agreement made between said General Paper Company and each of these defendants.

They further admit that the profits of the business of said General Paper Company, after payment of its expenses, are divided between the stockholders of said General Paper Company in proportion to their holdings. And save and except as aforesaid, these defendants

deny each and every matter, allegation and charge in the sixth paragraph of said petition and complaint contained.

Sixth. Upon information and belief these defendants admit that the Manufacturers Paper Company has been and now is a corporation duly created and organized under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, and having a branch office in the city of Chicago in the State of Illinois, as in said petition and complaint alleged.

They deny that about the year 1902, or at any other time, the said Manufacturers Paper Company entered into or became a party to any combination or conspiracy whatever with these defendants or any of them, and they deny that it was ever agreed between said

Manufacturers Paper Company and the General Paper Company, or between the said Manufacturers Paper Company and any of these defendants, that the said Manufacturers Paper Company should not compete with said General Paper Company or any other company or person whatever, for any business in the territory of Wisconsin or States west of the Mississippi, or for any business in any territory whatever; or that the said Manufacturers Paper Company should not offer any paper from the East or from any other section of the country whatever, to any customer of the General Paper Company, either directly or indirectly. And these defendants deny that they or any of them ever made or entered into any combination, agreement or conspiracy whatever with the said Manufacturers Paper Company respecting the manufacture, sale or distribution of paper in any territory whatever.

And save as aforesaid, these defendants deny each and every allegation, charge, matter and thing in the seventh paragraph of said petition, and complaint contained.

Seventh. These defendants deny each and every matter, thing allegation and charge in the eighth paragraph of said petition and complaint contained.

And save as aforesaid, these defendants deny each and every matter, allegation and charge in said complaint contained.

And these defendants jointly and severally deny all and all manner of unlawful combination and confederacy wherewith they or any of them are by the said bill charged, without this, that there is any other matter, charge, cause or thing in the said complainant's said petition and complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true, to the knowledge or belief of these defendants, all of which matters or things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

[CORPORATE SEAL.] GENERAL PAPER COMPANY,

By GEO. A. WHITING,

1st Vice President.

Attest:

JAMES G. FLANDERS, Solicitor.

11s

[CORPORATE SEAL.] THE ITASCA PAPER COMPANY,
 By FRANK F. BECKER, President.
 Attest: HENRY G. BECKER, Secretary.
 [CORPORATE SEAL.] HENNEPIN PAPER COMPANY,
 By B. F. NELSON, President.
 Attest: W. ED. NELSON, Secretary.
 [CORPORATE SEAL.] WOLF RIVER PAPER AND FIBRE
 COMPANY,
 By W. C. ZUCHOW, President.
 Attest: F. D. NABER, Secretary.
 [CORPORATE SEAL.] ATLAS PAPER COMPANY,
 By S. F. SHATTUCK, Acting President.
 Attest: S. F. SHATTUCK, Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] KIMBERLY & CLARK COMPANY,
 By F. J. SENSENBRENNER,
 Vice-President.
 Attest: S. F. SHATTUCK, Secretary.
 [CORPORATE SEAL.] RIVERSIDE FIBRE AND PAPER
 COMPANY,
 By HENRY F. SMITH, President.
 Attest: W. B. MURPHY, Secretary.
 [CORPORATE SEAL.] WAUSAU PAPER MILLS COM-
 PANY,
 By WALTER ALEXANDER, President.
 Attest: W. L. EDMONDS, Secretary.
 [CORPORATE SEAL.] CENTRALIA PULP AND WATER-
 POWER COMPANY,
 By F. GARRISON, President.
 Attest: F. GARRISON, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

11y

[CORPORATE SEAL.] COMBINED LOCKS PAPER COM-
 PANY,
 By WM. VAN NORTWICK,
 Acting President.
 Attest: WM. VAN NORTWICK, Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.
 [CORPORATE SEAL.] DELLS PAPER AND PULP COM-
 PANY,
 By W. L. DAVIS, President.
 Attest: F. ROYCE, Secretary.
 [CORPORATE SEAL.] GRAND RAPIDS PULP AND PA-
 PER COMPANY,
 By C. F. KELLOGG, Vice President.
 Attest: C. F. KELLOGG, Acting Secretary.
 Attest: JAMES G. FLANDERS, Solicitor.

[CORPORATE SEAL.] MENASHA PAPER COMPANY,
By S. E. SMITH, President.
Attest: M. H. BALLOU, Secretary.
[CORPORATE SEAL.] THE C. W. HOWARD COMPANY,
By C. W. HOWARD, President.
Attest: F. W. HAWKS, Secretary.
[CORPORATE SEAL.] THE NEKOOSA PAPER COM-
PANY,
By F. GARRISON, V. President.
Attest: F. GARRISON, Acting Secretary.
Attest: JAMES G. FLANDERS, Solicitor.
[CORPORATE SEAL.] THE FALLS MANUFACTURING
COMPANY,
By GEO. O. NERGSTROM,
Vice President.
Attest: J. H. DELBRIDGE, Secretary.
[CORPORATE SEAL.] FLAMBEAU PAPER COMPANY,
By WM. P. HARPER, President.
Attest: E. P. SURRY, Secretary.

11s

[CORPORATE SEAL.] THE JOHN EDWARDS MANU-
FACTURING COMPANY,
By F. GARRISON, Acting President.
Attest: F. GARRISON, Secretary.
Attest: JAMES G. FLANDERS, Solicitor.
[CORPORATE SEAL.] THE WISCONSIN RIVER PAPER
AND PULP COMPANY,
By GEO. A. WHITING, President.
Attest: C. A. BANCOCK, Secretary.
[CORPORATE SEAL.] TOMAHAWK PULP AND PAPER
COMPANY,
By A. M. PRIDE, Acting President.
Attest: A. M. PRIDE, Acting Secretary.
Attest: JAMES G. FLANDERS, Solicitor.
[CORPORATE SEAL.] NORTHWEST PAPER COMPANY,
By R. M. WEYERHAEUSER, President.
Attest: HUNTINGTON TAYLOR,
Asst Secretary.
[CORPORATE SEAL.] CONSOLIDATED WATER POWER
AND PAPER COMPANY,
By FALKLAND MacKINNON,
President.
Attest: F. MacKINNON, Acting Secretary.
Attest: JAMES G. FLANDERS, Solicitor.
[CORPORATE SEAL.] THE PETOSKEY FIBRE PAPER
COMPANY,
By JOHN J. ROYCROFT, Vice President.
Attest: EDWARD D. WARNER, Secretary.

JAMES G. FLANDERS AND
WILLIAM BRACE,
Solicitors and Counsel for the Aforesaid
Answering Defendants.

WINKLER, FLANDERS, SMITH, BOTTUM AND
FAWSETT AND DEFREES, BRACE & RITTER,
Of Counsel.

11aa In the Circuit Court of the United States for the District of
Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Complainant,

vs.

GENERAL PAPER COMPANY, THE ITASCA PAPER COMPANY, HEN-
nepin Paper Company, Wolf River Paper and Fiber Company,
Atlas Paper Company, Kimberly and Clark Company, River-
side Fibre and Paper Company, Wausau Paper Mills Company,
Centralia Pulp and Water-Power Company, Combined Locks
Paper Company, Dells Paper and Pulp Company, Grand
Rapids Pulp and Paper Company, Menasha Paper Company,
The C. W. Howard Company, The Nekoosa Paper Company,
The Falls Manufacturing Company, Flambeau Paper Company,
The John Edwards Manufacturing Company, The Wisconsin
River Paper and Pulp Company, Tomahawk Pulp and Paper
Company, Northwest Paper Company, Consolidated Water
Power and Paper Company, Manufacturers Paper Company,
The Petoskey Fibre Paper Company, Rhinelander Paper Com-
pany, Defendants.

11bb Answer of The Rhinelander Paper Company, One of the Above
Named Defendants, to the Bill of Complaint of the Above
Named Complainant, The United States of America.

This defendant, now and at all times saving and reserving unto
itself all benefit and advantage of exception to the many errors, un-
certainties, imperfections and insufficiencies in the complainant's said
bill of complaint contained, for answer thereto, or to so much and
such parts thereof as the said defendant is advised is material for it
to make answer to, answering says:

I. For answer to paragraph numbered I of said bill of complaint,
this defendant admits that it is a corporation, created and organized
under the laws of the State of Wisconsin. This defendant does not
know and has not been informed, save by said bill of complaint,
whether its co-defendants, who are alleged by paragraph I of said
bill of complaint to be corporations organized under the laws of the
State of Wisconsin, are such in fact, or have any corporate existence,
and neither does said defendant know, nor is it advised, save by said
bill of complaint, whether its co-defendants, alleged by said para-

graph numbered I of said complaint to be corporations organized under the laws of the State of Michigan and Minnesota, are such in fact, or that said defendants have any corporate existence.

II. For answer to paragraph numbered II of said bill of complaint this answering defendant admits that the parties named as defendants in paragraph numbered I of said bill were engaged in the business of manufacturing news print, manilla, fibre and other papers at their respective mills, and in marketing and selling their manufactured product in the territory alleged in said paragraph II of bill, as well as in other territory not therein described or set forth, but whether such manufacturing was done or said sales were made by said parties as individuals, firms or corporations this defendant does not know and is not informed, save by said bill of complaint. The answering defendant admits and avers that it, as a corporation, manufactured paper and sold the same wherever it could find a market therefor, and that it markets its product in the States named in said bill, as well as in other States not therein named.

III. For answer to paragraph numbered III of the bill of complaint this defendant avers that it was not organized until the year 1903, and that it does not know and has not been informed, save by said bill of complaint, as to what paper manufacturers were competing for business in the territory mentioned and described in the complaint during the year 1900.

IV. Answering paragraph numbered IV of the bill of complaint, this defendant admits that it is informed and believes that the defendant The General Paper Company, was organized during the month of May, 1900, with a capital stock of \$100,000.00, but this defendant does not know and is not advised, save by said bill of complaint, as to who the original stockholders in said corporation were, or whether or not the parties named in paragraph numbered IV of said bill of complaint as being the organizers of said corporation, organized the same or not. This defendant does not know, and is not advised, save by said bill of complaint, that the parties mentioned in said paragraph numbered IV entered into any agreement, combination or conspiracy with each other to restrain trade or commerce, or to control, regulate or monopolize trade or commerce, and denies on information and belief that any agreement was made by the parties mentioned in said paragraph numbered IV that was in violation of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and on information and belief this answering defendant further denies that any agreement, combination or conspiracy was entered into between the parties mentioned in said paragraph IV of said bill of complaint to restrain trade or commerce among the several States, or to control, regulate or monopolize trade or commerce therein. And the answering defendant further denies that the defendants who are alleged to have organized said General Paper Company, in said paragraph IV

of said bill of complaint, entered into any agreement, conspiracy or combination with other parties alleged to have subsequently joined in said unlawful agreement for the purpose of regulating, monopolizing or restraining trade or commerce, or that any agreement was made between said parties for any unlawful purpose.

Further answering said paragraph IV of said bill of complaint, this defendant does not know and is not advised who the stockholders of said General Paper Company are, or how said stock was apportioned, among the several holders thereof, and asks that said complainant be required to prove the allegations of the bill in this behalf.

Further answering said paragraph IV of said bill, this defendant admits that said General Paper Company, by its articles of incorporation, is authorized to become, and its principal business, sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products by mills in the State of Wisconsin, or elsewhere.

Further answering said paragraph IV of said bill of complaint, this defendant does not know and is not advised, except by said bill of complaint, as to whether or not all of the defendants named in said bill of complaint entered into an agreement with the General Paper Company for making it the exclusive selling agent for their papers and paper products, and on information and belief alleges that if such contracts were in fact entered into, they were not entered into as a result of any common plan or understanding between the parties finally making and constituting said General Paper Company and their sales agent.

This defendant further answering said paragraph IV of said 11cc complaint denies that said defendants, or any or either of them, conferred any power upon said General Paper Company to control or restrict the output of its mills. The answering defendant denies that said General Paper Company is by it authorized to fix the price at which its paper is to be sold, or that said General Paper Company has the right to determine to whom, and what terms and conditions, its paper shall be sold, or into what States it shall be shipped, or to whom it shall be shipped; on the contrary, this defendant alleges and avers that while it is the business of said General Paper Company to solicit orders for paper and make sales thereof, and obtain reasonable prices therefor, all orders taken by said General Paper Company for the answering defendant are subject to its approval, and it has the right to reject the same for inadequacy of price, or lack of sufficient financial standing on the part of the purchaser, or for any other good and sufficient reason.

Further answering said paragraph IV of said bill of complaint the answering defendant avers that it does not know and is not advised as to the nature of the contracts made and entered into between the General Paper Company and its co-defendants who are engaged in the business of manufacturing paper.

V. This defendant answering paragraph numbered V of the bill

of complaint, states that it does not know and is not advised, save by said bill of complaint, as to whether the Northwest Paper Company, the Consolidated Water-Power Company, the Itasca Paper Company, the Petoskey Fibre Company, the Menasha Paper Company, the Flambeau Paper Company, or the Wolf River Paper and Fibre Company, entered into or became parties to any agreement with said General Paper Company, or with the corporations which it is alleged in paragraph IV of said bill caused said General Paper Company to be incorporated.

This defendant admits that during the year 1904, it entered into a contract with said General Paper Company, by the terms
11ff and conditions of which contract said General Paper Company agreed to use its best efforts to sell, at the best prices obtainable and upon the best terms and conditions, any and all paper manufactured by said Rhinelander Paper Company and entrusted to it for sale by said Rhinelander Paper Company; further, that said General Paper Company should use its best efforts to keep the mills of said Rhinelander Paper Company supplied with orders that were shipped to suit the various machines in its said mills; also that said General Paper Company agreed to use its best efforts to secure and maintain harmony between said Rhinelander Paper Company and its customers; that, in consideration of such agreement on the part of said General Paper Company, said Rhinelander Paper Company on its part, agreed to pay said General Paper Company a commission of 3 per cent. on all sales effected by said General Paper Company for said Rhinelander Paper Company and approved by the latter; that said contract further provided that all sales effected by said General Paper Company for said Rhinelander Paper Company should be made and obtained subject to the approval of said Rhinelander Paper Company; that, under the terms of said contract, so long as said General Paper Company was able to secure orders sufficient to take the entire product or output of the mill of said company, said General Paper Company had the sole right to sell its product; that such contract did not exclude said Rhinelander Paper Company from selling its own paper, or selling its paper through other agencies, in the event that said General Paper Company did not furnish sufficient order to use the entire output of said mill.

Further answering said paragraph V of said complaint, this defendant specifically denies that it ever authorized or empowered the General Paper Company to control or restrict its product, or the output of its mill, or that said General Paper Company ever exercised or assumed to exercise any such right, power or authority; denies
11gg that said General Paper Company, or anybody else, ever in any manner, directly or indirectly restricted the output of the manufactured product of said Rhinelander Paper Company.

This defendant admits that said General Paper Company quoted prices on paper for this defendant, but only made such quotations

as were satisfactory, to said defendant, and avers that the acts of said General Paper Company in making prices on paper were not different from the acts of any other agent selling merchandise for his or its principal.

Further answering said paragraph V of said bill of complaint, this defendant expressly denies that it ever became a stockholder in the General Paper Company, or that it has any financial interest, direct or remote, in said General Paper Company.

This defendant further answering said paragraph V of said bill of complaint alleges that the aforesaid contract made and entered into between it and said General Paper Company is not, as it verily believes, a contract in restraint of trade, and is not a contract that is unlawful within the meaning of any statutes of the United States or of any law of the land; that said defendant made and entered into said contract with said General Paper Company as a matter of economy, and because it believed that the price charged by said General Paper Company for marketing and selling its product was less than said defendant could sell and dispose of its manufactured product for, if it be adopted any other means of selling, and the answering defendant further alleges that it entered into said contract in good faith, believing that it had the right to do so, and that it had the right to appoint any agent it saw fit to sell and dispose of its manufactured product.

VI. Answering paragraph VI of said complaint, this defendant admits that it pays to said General Paper Company, a commission upon all sales of paper made by said General Paper Company as its agent, and defendant is advised that said General Paper Company likewise acts as sales agent for a large number of other mills, but just what mills said General Paper Company acts as sales agent for this defendant is not advised and does not know.

This defendant, further answering said paragraph VI of said bill of complaint, avers that it is not advised and does not know how said General Paper Company distributes the profits that it derives from the transaction of its business, but alleges on information and belief that such profits are divided among the stockholders of the company in proportion to the amount of stock which they hold in the same.

VII. Answering paragraph VII of said bill of complaint, this defendant is not advised and does not know of the organization or of the existence of the Manufacturers Paper Company, excepting as it is advised by said bill of complaint; does not know where its place of business is, and does not know and is not advised as to any contracts that it has ever made with the General Paper Company or any one else, or whether or not it is engaged in business at Chicago, or any other place; neither does this defendant know, nor is it advised, except by said bill of complaint, that said Manufacturers Paper Company entered into any combination or conspiracy with said General Paper Company or with any one else, or that it entered into

any contract with said General Paper Company whereby it agreed not to sell paper in certain territory, or that it ever was a party to any combination or conspiracy in restraint of trade, and this defendant asks that said complainant be put to proof as to the allegations contained in paragraph VI of the bill of complaint.

VIII. Answering paragraph VIII of said bill of complaint, this defendant denies that, by means of any combination or conspiracy, or otherwise, competition has been suppressed in the manufacture sale or distribution of news print, manilla, fibre or other papers in the States mentioned in the bill of complaint, or in any other States, and this defendant further answering said bill of complaint expressly denies that the price of news print paper has been increased to the extent alleged in said bill of complaint. Defendant avers, on information and belief, that during the last few years there has been a slight increase in the price of news print paper; that there have been times in recent years, as defendant is advised and believes, when such paper was sold below the actual cost of production; that within recent years the wood out of which said paper is being manufactured is becoming scarce, and the price thereof has been continually rising; that fuel and labor, and other ingredients, have been largely increased in price in the last few years; that, in consequence thereof, manufacturers of news print paper have been obliged to increase the prices of the same to some extent, but this defendant on information and belief alleges that at no time have such prices been increased so as to yield an unreasonable margin of profit on the moneys invested in manufacturing plants by the paper-makers in the States of Wisconsin, Michigan and Minnesota.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause or thing in the said complainant's bill of complaint contained, material or necessary for the defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denies, is true to the knowledge or belief of this defendant, and all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf sustained.

RHINELANDER PAPER COMPANY,
By A. W. BROWN, President.

Attest: PAUL BROWNE, Secretary.

J. W. BARNES,
HARROLD HARRIS,
Solicitors for the Defendant
Rhineland Paper Co.

(Endorsed: Answer of the Rhineland Paper Company. Filed March 6th, 1905. Henry D. Lang, clerk. Louise B. Trott, deputy.)

12

Order to Show Cause.

On the petition hereto attached and it appearing to the court that the said witness E. T. Harmon, in said petition mentioned, was heretofore served with a subpoena issued out of this court requiring him to appear before said examiner in said cause, as in said petition stated, it is

Ordered, that the said witness E. T. Harmon be and appear before the Honorable William H. Seaman, judge of the United States circuit court for the eastern district of Wisconsin, forthwith, to show cause why he should not make full and proper answer to each of the questions referred to in said petition and more particularly in the schedule thereunto annexed, and also fully comply with each and every of the requests mentioned in said petition and more particularly set forth in the schedule thereunto annexed; and also produce, for the purposes of his said examination, for the purpose of inspection by counsel for the petitioner, and for the purpose of being offered in evidence in the said cause, the papers, orders and acceptances particularly referred to in the said petition and schedule; and abide by such other and further order as this court may make.

It is further ordered, that a copy of this order, with the said petition and schedule thereto annexed, be personally served upon the attorneys for said witness E. T. Harmon, Messrs. Winklers, Flanders, Smith, Bottum and Fawsett, and Defrees, Brace and Ritter.

(Signed)

WM. H. SEAMAN,
United States Circuit Judge.

Dated this — day of July, 1905.

13 July 8, 1905.—Answer of E. T. Harmon to said petition and order to show cause filed pursuant to order of Aug. 3, 1905, as follows:—

Circuit Court of the United States, Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

Now comes E. T. Harmon and answering the order to show cause in the above entitled matter, made and filed the 8th day of July, 1905, and the petition upon which said order to show cause was made, alleges and shows unto the court as follows:—

That this respondent is and at all times herein mentioned and referred to was a director of General Paper Company, one of the defendants in the above entitled action; that from the month of January 1901, until the 5th day of June, 1905, he was one of the general officers,

to-wit: the president and also the manager of Grand Rapids Pulp & Paper Company, one of the defendants in the above entitled matter; that the papers, orders and acceptances referred to in said petition and order to show cause are not and were not at the time the questions therein referred to were asked of this respondent in his custody or under his control, and that he then had and now has no power to produce or to compel the production of said papers, orders and acceptances.

Further answering, this respondent alleges that he is a stockholder of Centralia Pulp & Water Power Company, one of the defendants in the above entitled matter, owning and holding one hundred sixty (160) shares of stock therein of the par value of sixteen thousand dollars (\$16,000.00).

That the defendants Grand Rapids Pulp & Paper Company, General Paper Company and Centralia Pulp & Water Power Company and this respondent, and each of them have objected and
14 do object to the production of said papers, orders and acceptances for inspection by counsel for said complainant or for the purpose of being offered in evidence in said cause. Said objections are based upon the following reasons:

First. That the materiality of said papers, orders and acceptances in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division of said district has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said papers, orders and acceptances contain matters of importance relating to the business of said General Paper Company and Grand Rapids Pulp & Paper Company in no way bearing upon or touching the issues in said cause which it would be highly injurious to the business interests of said companies and the other defendants in said cause to make public, and this respondent submits that he ought not to be required to disclose any portions of said papers, orders or acceptances except on a proper showing that the same are material to said cause to establish some issue therein, and a showing that the same are not privileged for the protection of said defendants.

Second. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said papers, orders and acceptances is to establish and to compel said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company and this respondent as a director,
15 officer or stockholder of said companies to furnish to said complainant evidence tending to establish that said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company have been guilty of certain

violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and the acts amendatory thereof or supplementary thereto as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company to the penalties for such violations imposed by said act, and that to compel the production by said General Paper Company, Grand Rapids Pulp & Paper Company or said Centralia Pulp & Water Power Company, through their officers or otherwise, of said papers, orders and acceptances for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal cause to be a witness against himself, and also contrary to the provisions of the fourth amendment to the Constitution of the United States, which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company, complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause, would, if committed by them, be violations of the laws of the State of Wisconsin and would subject said corporations to forfeitures of their charters and other penalties under said laws; that to compel either of
16 said corporations, through its officers or otherwise, to produce said papers, orders and acceptances for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Fourth. That in addition to the matters above set forth, the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district, and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants respectively, on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said act of Congress; that said contracts and agreements are of great value to said General Paper Company and upon which rests practically its entire business; and that the same are also of great value to and constitute valuable property rights in each of the other defendants respectively parties

thereto, including said Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company, and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company and to said Grand Rapids Pulp & Paper Company and to said Centralia Pulp & Water Power Company and to this respondent as a stockholder therein, and that to compel the production by said General Paper Company
17 and said Grand Rapids Pulp & Paper Company or either of them, through their officers or otherwise, of said papers, orders and acceptances for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this respondent alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which this respondent refused to answer, as stated in said petition, came to this respondent's knowledge exclusively as president and manager of said Grand Rapids Pulp & Paper Company or as a director of said General Paper Company in the conduct of matters entrusted to him as such president and manager or as such director, and which said companies, from the nature of the case, were compelled to entrust to this respondent as such president and manager or as such director, and that said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company have objected and do object, and this respondent has objected and does object, to said questions and to the same being answered by him for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the papers, orders and acceptances above mentioned, that is to say:

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court
18 of equity to order them to be answered and that the same are not material, relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel said General Paper Company, through this respondent as its director, and said Grand Rapids Pulp & Paper Company, through this respondent as its president and manager, to furnish to said complainant evidence tending to establish that said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company have been guilty of certain violations of the acts of Congress above referred to and to subject them to the penalties for such vio-

lations imposed by said acts, and that to compel said General Paper Company and said Grand Rapids Pulp & Paper Company through this respondent, to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of said General Paper Company and of the other defendants, including said Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company, complained of by said complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause, would be, if committed by them, violations of the laws of the State of Wisconsin and would subject said General Paper Company and said Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company to forfeiture of their charters and other penalties under said laws: that to compel them, through this respondent, to answer the questions aforesaid, would be to compel them to furnish evidence tending to establish that they have been guilty of such acts and subject them to the forfeiture of their charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth, the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree enjoining said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of and operation under the agency contracts and agreements existing between it and the other defendants named in said cause, on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; said contracts and agreements are of great value to said General Paper Company and upon which rests practically its entire business and that the same are also of great value to and constitute valuable property rights in each of the other defendants respectively parties thereto, including the Grand Rapids Pulp & Paper Company and the Centralia Pulp & Water Power Company; and that such injunction from carrying out said contracts and agreements and their virtual annulment thereby occasioned would result in great injury, damage and loss to said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water Power Company and this respondent as a stockholder therein, and that to compel this respondent to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions, which may subject him, either directly or eventually, to prosecution for a crime or to

a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

20 Further answering, this respondent alleges that he ought not to be required to answer the questions or comply with the requests to produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the papers, orders and acceptances referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth but also for the following reasons, that is to say:

First. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the papers, orders and acceptances aforesaid is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said papers, orders and acceptances would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Second. That the alleged acts of said General Paper Company, Grand Rapids Pulp & Paper Company and Centralia Pulp & Water

21 Power Company, complained of by the complainant in its said original petition and bill of complaint in said cause, and which said complainant is endeavoring to establish, in said cause, would, if committed by said defendant companies, involve violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeitures under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said papers, orders, and acceptances would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

Third. That one of the purposes of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in seeking to require this respondent to answer the questions and

comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the papers, orders and acceptances aforesaid is to establish and to compel this respondent to furnish to said complainant evidence tending to establish the allegations of the original petition or bill of complaint in said cause, which, if established, will result in subjecting this respondent to loss or detriment in the nature of a penalty or forfeiture, in that The Centralia Pulp & Water Power Company, one of the defendants in said cause, of which this respondent is a stockholder as aforesaid, will be subjected under the laws of the State of Wisconsin to a forfeiture of its charter, resulting in the virtual forfeiture of

22 the stock of this respondent in said company and to the loss and forfeiture, to a large extent, of the value of the interest of this respondent in said corporation, and in that the contracts made by Centralia Pulp & Water Power Company with its customers for the sale of its products, through the General Paper Company as its sales agent, under and pursuant to the agency contract of said Centralia Pulp & Water Power Company with the General Paper Company hereinbefore referred to, will be virtually annulled and the property rights of said Centralia Pulp & Water Power Company in said contracts destroyed; that there are a large number of such contracts outstanding under which large sums of money are due to said Centralia Pulp & Water Power Company, to-wit: exceeding the sum of ten thousand dollars, all of which, as this respondent is advised and believes, will be or may be forfeited and lost to the Centralia Pulp & Water Power Company and to this respondent as a stockholder therein in case the illegal combination alleged in the complaint is established by the decree or judgment in said cause; and this respondent alleges that to compel him to answer the questions and comply with the requests and produce for inspection and for the purpose of being offered in evidence the papers, orders and acceptances referred to in said order to show cause and the schedules thereto annexed, and which he has declined to answer, comply with or produce, if material to said cause would be contrary to the provisions of said fourth and said fifth amendment to the Constitution of the United States and also contrary to the well established rule of the common law and of equity jurisprudence, that no person will be compelled to discover any fact or matter which may subject him to forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Wherefore this respondent asks that said order to show cause be dismissed.

(Signed)

E. T. HARMON.

WINKLER, FLANDERS, SMITH,
BOTTUM & FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for Respondent E. T. Harmon.

and not otherwise has access to the books, records, papers, reports and contracts mentioned in said order to show cause and that the same are the books, records, papers, reports, and contracts of this defendant and not of said witness and are subject to the control of this defendant, and that this defendant has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said petitioner, or for the purpose of being offered in evidence in said cause. Said objection is based upon the following reasons :

First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the circuit court of the United States for the district of Minnesota in the third division in said district has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of this defendant in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of this defendant and the other defendants in said cause to make public, and this defendant submits that it ought not to be required through its said director or otherwise to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of this defendant.

Second. That the purpose of said complainant in instituting said cause in said circuit court of the United States in and for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel this defendant to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject this defendant to the penalties for such violations imposed by said act, and that to compel the production by this defendant through its said director or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States which provides that no person shall be compelled in any criminal case to be a witness against himself; and also contrary to the provisions of the fourth amendment to the Constitution of the United States which provides that the right of the people to be secure

in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Third. That the alleged acts of this defendant complained of by the complainant in its said original petition and bill of complaint in said cause, and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this defendant to forfeiture of its charter and other penalties under said laws; that to compel it through its said director or otherwise to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

27 Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said circuit court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to this defendant and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel the production by this defendant through its said director or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any facts either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

Further answering this defendant alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which said witness refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization
28 of this defendant and have no relation whatever to the issues in the cause aforesaid, came to the knowledge of said witness exclusively as a director of this defendant in the conduct of matters

entrusted to him as such director by this defendant, and which this defendant, from the nature of the case, was compelled to entrust to him as such director, and that this defendant has objected and does object to said questions and to the same being answered by said witness for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say:

First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered, and that the same are not material relevant or competent evidence in said cause.

Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel this defendant, through its said director, to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the acts of Congress above referred to and to subject this defendant to the penalties for such violations imposed by said acts, and that to compel this defendant through its said director to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment- to the Constitution of the United States.

Third. That the alleged acts of this defendant complained of by the complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this
29 defendant to forfeiture of its charter and other penalties under said laws; that to compel it through its said director to answer the questions aforesaid would be to compel it to furnish evidence tending to establish that it has been guilty of such acts, and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions, hereinbefore referred to, of said fourth and said fifth amendment- to the Constitution of the United States.

Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to this defendant and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel this defendant, through its said director, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said

fourth and said fifth amendment- to the Constitution of the United States but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

30 Wherefore this defendant asks that said order to show cause be dismissed.

GENERAL PAPER COMPANY,
By L. M. ALEXANDER, Secretary.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for Defendant.

STATE OF WISCONSIN,
Eastern District of Wisconsin, } ss :
County of Milwaukee,

L. M. Alexander, being first duly sworn, deposes and says that he is the secretary of General Paper Company, the defendant making the above answer, and verifies said answer in behalf of said General Paper Company, which is a corporation ; that all the facts set forth in said answer are within the knowledge of this deponent and that the same are true to his own knowledge.

(Signed)

L. M. ALEXANDER.

Subscribed and sworn to before me, this 7th day of July, A. D. 1905.

[SEAL.]

JOHN H. HURLEY,
Notary Public, Wisconsin.

My commission expires August 2, 1905.

31 Order Requiring E. T. Harmon to Answer.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of Proceedings to Compel the Witness E. T. Harmon to Answer Questions and Produce Papers, Orders, and Acceptances.

The above entitled matter having come before the court on the petition of the above named complainant, The United States of America, and the order to show cause issued in accordance with the

prayers of said petition, directing the witness E. T. Harmon, mentioned in said petition, to appear and show cause why he should not answer certain questions and produce certain papers, orders and acceptances, particularly described and set forth in the said petition and schedule of refusals thereunto annexed; and upon all of the answers filed as of this date the said witness, E. T. Harmon, and the defendants, appearing by their counsel, Messrs. Winkler, Flanders, Smith, Bottum & Fawsett and Messrs. Defrees, Brace & Ritter, and having filed their answers to said petition; and the complainant, The United States of America, appearing by its counsel, Messrs. Frank B. Kellogg, James M. Beck and Robert E. Olds; and the court having heard the respective counsel and duly considered the cause, it is now therefore ordered, adjudged and decreed:

That the said witness E. T. Harmon be and he is hereby directed to appear before Robert S. Taylor, special examiner in the above entitled action, at a time and place hereafter to be designated
 32 by said examiner in the United States court house in the city of Milwaukee, Wisconsin, and there directed to answer each and every of the questions put to him by the counsel for said complainant, The United States of America, as set forth in the petition herein and the schedule thereunto annexed; and the said witness E. T. Harmon is directed to produce before the said examiner at such time and place the papers, orders and acceptances requested of him by counsel for the complainant, as more particularly appears by said petition and the schedule of refusals thereunto annexed, for the purpose of his examination in said cause, and for use in evidence by the complainant, The United States of America, in said examination; and the complainant's counsel shall have the right at such time and place and on any adjournment of said hearing before said examiner to inspect the said papers, orders and acceptances and to introduce them and any of them in evidence in said cause; but the custody of said papers, orders and acceptances shall not be taken from the said witness or his counsel except as may be necessary for such inspection and use in evidence, the permanent custody thereof to remain in said witness.

(Signed)

WM. H. SEAMAN,
 United States Circuit Judge.

Dated this 8th day of July, 1905.

32½ [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Final order as to E. T. Harmon. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed July 8, 1905.

33 August 3, 1905.—Assignment of errors by E. T. Harmon and General Paper Company, filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing E. T. Harmon to answer certain questions, comply with certain requests, and produce certain papers, orders, and acceptances for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Assignment of Errors by E. T. Harmon and General Paper Company.

Now come the said E. T. Harmon and said General Paper Company and assigning errors in the above entitled matter say that in the final order and decrees heretofore made and entered in said matter by the court aforesaid there is error in the respects hereinafter set forth, that is to say:

1. The court erred in directing said E. T. Harmon to answer the question: Did the Grand Rapids Pulp & Paper Company have any arrangement with the General Paper Company during the
34 year 1904 with reference to a fixed or flat price for hanging paper sold during that year as between the two companies?

2. The court erred in directing said Harmon to answer the question: Was there any arrangement between the Grand Rapids Pulp & Paper Company and the General Paper Company with relation to the amount or price for which the Grand Rapids Pulp & Paper Company was to be credited for hanging paper per hundred pounds sold during the year 1904?

3. The court erred in directing said Harmon to answer the question: Was there not a stated or fixed price for hanging paper at which the Grand Rapids Pulp & Paper Company was to be credited in the first instance as between the General Paper Company and the Grand Rapids Pulp & Paper Company?

4. The court erred in directing said Harmon to answer the question: Was there not an arrangement between the General Paper Company and the Grand Rapids Pulp & Paper Company whereby the mill was to be credited with a fixed or flat price for hanging paper during the year 1904 and was to receive subsequently its proportion of the amount over and above that fixed price at which the General Paper Company might sell that paper?

5. The court erred in directing said Harmon to answer the question: Was not the surplus or excess above a certain flat or fixed price for hanging paper sold by the General Paper Company or

through the General Paper Company divided up among the mills making hanging paper in proportion to their output?

6. The court erred in directing said Harmon to answer the same question with reference to the years 1903, 1902, 1901 and 1900.

7. The court erred in directing said Harmon to answer the question: Did not all of the mills manufacturing hanging paper receive a credit of a certain fixed amount or price per hundred pounds for such paper from the General Paper Company and receive a dividend comprising its share of the surplus over and above that flat price at which the General Paper Company might sell the
35 product?

8. The court erred in directing said Harmon to answer the question: Did not each mill making the General Paper Company its selling agent receive from the General Paper Company a fixed price for its product—a price equal to all of the mills manufacturing the grade of paper in question, and subsequently receive a proportion of all that might be realized by the General Paper Company through the sale of that paper above that price?

9. The court erred in directing said Harmon to answer the question: Was not all of the balance realized above a fixed price for paper distributed among the mills in the General Paper Company in the proportion to their output?

10. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take from the constituent mills the paper manufactured by them at a fixed or stated price and then was not the balance realized above that price through the sale of the paper distributed among the constituent mills in proportion to their output so as to equalize the prices as among the constituent mills?

11. The court erred in directing said Harmon to answer the question: By the term "constituent mills" I refer to mills which have made General Paper Company their exclusive selling agent. Taking the term in that sense, I repeat the question.

12. The court erred in directing said Harmon to answer the question: I ask you the same question as the last question with particular reference to news print paper.

3. The court erred in directing said Harmon to answer the question: Was not the news print paper manufactured by the Grand Rapids Pulp & Paper Company sold through the General Paper Company or to the General Paper Company at a fixed or stated price per hundred pounds?

36 14. The court erred in directing said Harmon to answer the question: State whether or not the General Paper Company did not take the news print paper manufactured by the Grand Rapids Pulp & Paper Company at a fixed and stated price.

15. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take the news print paper manufactured by the mills of which it was the exclusive selling agent at a fixed and stated price?

16. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take news print paper manufactured by the mills of which it was the exclusive selling agent at a stated price and was not the balance realized from the sale of such paper over and above that stated price divided among those mills making news print paper in proportion to their output so as to equalize the price among such mills?

17. The court erred in directing said Harmon to answer the question: I ask you that question with particular reference to the year 1900?

18. The court erred in directing said Harmon to answer the same question with reference to the years 1901, 1902, 1903, 1904 and 1905.

19. The court erred in directing said Harmon to answer the question: Do the books of the Grand Rapids Pulp & Paper Company show whether or not the paper, both hanging and news print, manufactured by that company was disposed of through the General Paper Company at a fixed or stated price?

20. The court erred in directing said Harmon to answer the question: Do the books of the Grand Rapids Pulp & Paper Company show or give any information as to whether or not the Grand Rapids Pulp & Paper Company received from or through the General Paper Company, either directly or indirectly, any credit representing a proportion received by the Grand Rapids Pulp & Paper

37 Company of the balance realized over and above a fixed and stated price for paper manufactured by that company?

21. The court erred in directing said Harmon to answer the question: State whether or not there was any arrangement or understanding among the mills manufacturing hanging paper or among those mills and the General Paper Company whereby the prices which each mill should receive for hanging paper were equalized.

22. The court erred in directing said Harmon to answer the question: I ask you the same question with reference particularly to news print paper.

23. The court erred in directing said Harmon to produce every order secured by the General Paper Company and filled by the Centralia Pulp & Water-Power Company and the acceptance thereof by the latter company so that the same could be submitted to the inspection of counsel for the United States and put in evidence by him.

24. The court erred in directing said Harmon to state whether he had given all the excuses he desired to give for not answering the question whether he would produce the orders just referred to before the examiner so that counsel for the United States might put them in evidence.

25. The court erred in directing said Harmon to appear before Robert S. Taylor, special examiner in the above entitled action, and answer each and every of the questions put to him by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedule thereunto annexed.

26. The court erred in directing said Harmon to produce before said examiner the papers, orders and acceptances requested by counsel for said complainant as set forth in said petition and schedule for the purposes of his examination in said cause and for use in evidence by the complainant in said examination.

38 27. The court erred in ordering that said complainant's counsel shall have the right to inspect the said papers, orders and acceptances.

28. The court erred in ordering that said complainant's counsel shall have the right to introduce the said papers, orders and acceptances and any of them in evidence in said cause.

Wherefore said E. T. Harmon and said General Paper Company pray that the order and decree of said circuit court of the United States for the eastern district of Wisconsin in the above matter, for the errors aforesaid and for other errors in the record and proceeding in said matter and in the order and decree aforesaid, may be reversed and that said court may be directed to enter a decree dismissing the petition in said matter.

WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,

Solicitors for said E. T. Harmon and
said General Paper Company.

JAMES G. FLANDERS, Of Counsel.

38½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company et al., defendants. Assignment of errors by E. T. Harmon and General Paper Company. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz clerk.

39 August 3, 1905.—Petition of E. T. Harmon and General Paper Company for appeal filed as follows:—

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing E. T. Harmon to answer certain questions, comply with certain requests, and produce certain papers, orders, and acceptances for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Now come E. T. Harmon and General Paper Company and pray for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of said circuit court heretofore made and filed in said matter and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, and that pending said appeal further proceedings under said final order and decree may be stayed by order of this court.

WINKLER, FLANDERS, SMITH, BOTTUM &
 FAWSETT AND
 DE FREES, BRACE & RITTER,
 Solicitors for said E. T. Harmon and
 General Paper Company.

JAMES G. FLANDERS, Of Counsel.

39½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Petition for allowance of appeal by E. T. Harmon and General Paper Company. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz clerk.

40 August 3, 1905.—Bond for cost on appeal of E. T. Harmon and General Paper Company filed as follows:

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing E. T. Harmon to answer certain questions, comply with certain requests, and produce certain papers, orders, and acceptances for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

Know all men by these presents, that we, E. T. Harmon and General Paper Company as principals and the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the sum of one thousand dollars (\$1000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves and our heirs, executors, administrators and successors jointly and severally by these presents.

Sealed with our seals and dated this second day of August, A. D. 1905.

Whereas the said E. T. Harmon and General Paper Company have taken and prosecuted their appeal to the Supreme Court of the United States to reverse the final order and decree heretofore made and filed in the above entitled matter by said circuit court of the United States for the eastern district of Wisconsin.

Now, therefore, the condition of this obligation is such that if the above named E. T. Harmon and General Paper Company shall prosecute their appeal to effect and answer all costs and damages that may be adjudged or awarded against them if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

E. T. HARMON, [SEAL.]
 By JAS. G. FLANDERS, His Attorney.

Signed, sealed and delivered in presence of
 CHARLES E. MONROE.

GENERAL PAPER COMPANY, [SEAL.]
 By LEWIS M. ALEXANDER, Secretary.

Signed, sealed and delivered in presence of
 CHARLES E. MONROE.
 GEO. F. DOVE.

THE UNITED STATES FIDELITY &
 GUARANTY CO., [CORPORATE SEAL.]
 By STEPHEN H. HOFF, Its Att'y in Fact.

The above and foregoing bond is hereby approved.

WM. H. SEAMAN,
Circuit Judge.

41½ [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company *et al.*, defendants. Bond on appeal of E. T. Harmon and General Paper Company. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

42 Order Allowing Appeal.

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs. }
GENERAL PAPER COMPANY ET AL., Defendant. }

In the Matter of the Petition of THE UNITED STATES OF AMERICA for an order directing E. T. Harmon to answer certain questions, comply with certain requests, and produce certain papers, orders, and acceptances for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district.

The above named E. T. Harmon and General Paper Company having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of this court heretofore made and filed in the above entitled matter, and that pending said appeal further proceedings under said decree may be stayed by the order of this court; and said E. T. Harmon and General Paper Company having filed a bond with surety satisfactory to this court in the penalty of one thousand dollars (\$1000.00) conditioned on the prosecution of said appeal to effect by said E. T. Harmon and said General Paper Company, and to answer all damages and costs if said appellants fail to make said appeal good:

It is now therefore ordered that said appeal of said E. T. Harmon and said General Paper Company be, and the same is, hereby allowed; that said bond be, and the same is, hereby approved, and that further proceedings under said final order and decree be, and the same are, hereby stayed pending said appeal.

WM. H. SEAMAN,
Circuit Judge.

Dated August 3rd, 1905.

42} [Endorsed:] Circuit court of the United States eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Company, defendants. Order allowing appeal of General Paper Company and E. T. Harmon, and staying proceedings. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 3, 1905. Edw. Kurtz, clerk.

43 Order Allowing Answers to be Filed as of July 8, 1905.

In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

It is hereby ordered and directed that the answer of General Paper Company, verified on the 7th day of July, 1905, and the answer of E. T. Harmon, verified on the 27th day of July, 1905, in the above entitled matter, may be filed as of the 8th day of July, 1905.

Dated August 3rd, 1905.

WM. H. SEAMAN,
 Circuit Judge.

43} [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Co., et al., defendants. Order. Matter of E. T. Harmon. Filed August 3, 1905 Edw. Kurtz clerk.

44 August 12, 1905.—Stipulation of the parties to make the testimony on the appeals of the General Paper Company and others part of the record on this appeal, filed as follows:—

Stipulation.

In the Circuit Court of the United States for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET ALS., Defendants. }

In the Matter of the Appeal of E. T. HARMON and THE GENERAL PAPER COMPANY from the Order of the Above Court Directing the said Witness, E. T. Harmon, to Answer Questions.

It is hereby stipulated and agreed that, in certifying the record in the above matter to the Supreme Court of the United States, the

clerk may, in his certificate, refer to the testimony and exhibits embodied in the record certified by him to the Supreme Court of the United States in the appeals of the General Paper Company, L. M. Alexander, W. Z. Stuart and George A. Whiting, from the order directing said Alexander, Stuart and Whiting to answer questions, and, by such reference, make the said testimony and exhibits in said other appeals a part of the record in this appeal, it being understood that the said testimony and exhibits shall be considered on this appeal in the same manner as if embodied in the record herein.

FRANK B. KELLOGG,

JAMES M. BECK, &

DAVIS, KELLOGG & SEVERANCE,

Solicitors for Complainant, The United States of America.

WINKLER, FLANDERS, SMITH,

BOTTUM & FAWSETT AND

DE FREES, BRACE & RITTER,

Solicitors for General Paper Company and E. T. Harmon.

45 James G. Flanders, Volume II.

Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }

vs.

GENERAL PAPER COMPANY ET AL., Defendants. }

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Re-cross examination.....

ROBERT S. TAYLOR,

Special Examiner.

46 June 7, 1905.—By consent of all parties the hearing before the examiner was adjourned until Thursday, June 15, 1905.

By consent of all parties the hearing before the examiner was further adjourned until June 21, 1905.

By consent of all parties the hearing before the examiner was further adjourned until June 26, 1905.

MILWAUKEE, WISCONSIN, June 26, 1905.

At 10:15 a. m. the hearing was resumed before the examiner, at room 314 Federal building.

Present: The special examiner; on behalf of the petitioner, Mr. Robert E. Olds; on behalf of the defendants Mr. James G. Flanders and Mr. William Brace.

L. T. BOYD, being duly sworn as a witness on behalf of the petitioner, testified as follows:

Direct examination.

Examined by Mr. OLDS:

Q. What is your business, Mr. Boyd?

A. Publisher of the Milwaukee Journal.

Q. That is a daily paper, published in this city?

A. Yes sir.

Q. How long have you been the publisher of the Milwaukee Journal?

A. Since 1890.

Q. Have you taken part in the active management of that newspaper?

A. Yes sir.

Q. In what capacity?

A. As publisher and business manager.

Q. Have you had charge of the purchase of news print paper used by the Milwaukee Journal during that time?

A. Yes sir.

47 Q. You have made the contracts yourself for the purchase of such paper?

A. I have.

Q. About how much news print paper has the Milwaukee Journal used annually, that is, in general terms?

A. It has varied with the growth of the paper.

Q. About how much paper is used at present?

A. About 1000 tons a year.

Q. Have you used that amount for the last six or seven years?

A. No, not that amount; probably from 700 to 1000 tons a year.

Q. Prior to 1900 where did you purchase your paper?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial.

A. From various mills.

Q. Located where?

Same objection by defendants.

A. In the State of Wisconsin.

Q. Can you name some of them?

A. Philmany Paper Company the Grand Rapids Pulp and Paper

Company, the Badger Paper Company, the Nekoosa Paper Company ; those are the principal ones.

Q. You were accustomed to buy this paper from different mills in the State of Wisconsin prior to the year 1900 ?

A. Yes.

Q. Did any other mills than those you have mentioned bid for your contract ?

Same objection by defendants.

A. It was a rare exception when we got any outside offers at all.

Q. I say other mills in Wisconsin other than those you have mentioned ; did they ever bid for your contract ? You have
48 mentioned three or four.

A. We may have had offers in that time, but if we had we were either tied up to contracts or prices or *prices* were not attractive.

Q. About how long do you make contracts for ?

Same objection by defendants.

A. By the year, as a rule.

Q. By the time your contracts expired was it customary or not for Wisconsin mills to bid for your contract ?

Same objection by defendants.

A. It was.

Q. Was that bidding or competition active and strong, or otherwise ?

Objected to by defendants for the same reasons, and as leading and calling for the opinion of the witness.

A. It was earnest competition.

Mr. FLANDERS : I move to strike that answer out for the same reasons.

Q. What form did that competition take ? Did they solicit your trade, or did they come and call on you ? How was it done ?

Mr. FLANDERS : Objected to for all the reasons specified and as leading.

A. Representatives of the mills usually visited the office.

Q. What company or what mill was supplying your paper in the year 1899 ?

Same objection by defendants.

A. The Nekoosa Paper Company.

Q. And did you have a regular contract with that company ?

A. We had.

Q. Beginning when ?

A. That contract began in December, 1898.

Q. And ran how long?

49 A. It ran for one year, I think—the first contract.

Q. Have you that contract here?

A. I have.

Q. Will you produce it?

The contract is produced by the witness, and the same is marked "Petitioner's Exhibit 139."

Q. Is paper marked "Petitioner's Exhibit 129" the contract of which you speak?

A. That is the contract.

Q. I notice across the face of this paper something is written which purports to be a renewal. That is not the original contract; that has nothing to do with the original contract, has it?

A. No, that is a supplementary contract.

Q. And when was that written on the face of the original contract?

A. I think in August, 1900.

Q. And it was by way of renewal (as it purports to be) of the original contract, with certain variations in the terms.

A. Yes.

Q. And the original contract was entered into between the Journal and the Nekoosa Paper Company by T. E. Nash, its president?

A. It was.

Q. And the renewal written across the face of it, in August, 1900, was entered into by the same party, was it?

A. Yes, Mr. Nash.

Petitioner offers in evidence Petitioner's Exhibit 139.

Objected to by defendants as irrelevant, incompetent and immaterial.

Q. I notice the price per hundred pounds mentioned in this contract is \$1.70. How does that compare with the price per one hundred pounds which you paid on any other contracts in the period prior to 1900, limiting your answer from 1895 down to
50 1900?

Same objection by defendants.

A. Very much higher.

Q. How did the price usually run, do you remember?

A. It ran from \$1.52 up to \$1.75.

Q. So that the price made in the contract Petitioner's Exhibit 139, is higher than the price which you usually paid prior to 1900?

Same objection by defendants, and also as leading.

A. That is about the average; possibly a little higher.

Q. Did you usually obtain a discount of three per cent. for cash on these contracts made prior to 1900? A.

Objected to by defendants for the same reasons, as leading and on the ground that the contracts themselves are the best evidence.

A. Usually provided for in the contract.

Q. Q. What provision, if any, was made in the contracts prior to 1900 with respect to the return of waste paper?

Objected to by defendants as irrelevant, incompetent, immaterial and upon the further ground that the contracts are the best evidence.

A. We were allowed to return waste, as it was called.

Q. At what price?

Same objection by defendants.

S. The contract price.

Q. And were these prices that you got prior to 1900 prices at the mill, or at Milwaukee, or delivered at your place of business.

A. Our place of business, usually termed sidewalk.

Q. Sidewalk delivery? And how did the paper run prior to 1900 with respect to weight?

Objected to by defendants as irrelevant, incompetent and
51 immaterial.

A. Our weight was always required to be lighter than the weight specified in the present contract.

Q. What was the weight, Mr. Boyd, that you usually required and secured prior to 1900?

Same objection by defendants, and on the further ground that the contract is the best evidence.

A. Ranging from 110 pounds to 120 pounds at the outside.

Mr. FLANDERS: 110 pounds to 120 pounds what?

WITNESS: That means a thousand.

Q. You mean a thousand sheets?

A. Yes, sir.

Q. Sheets of the Journal as it is printed, or how?

A. No; that is the term applied in the paper business. Supposed to be flat sheets.

Q. Can you give the size of each sheet?

A. Our size is 24 by 36 inches.

Q. And your weight was then 110 to 120 pounds—

A. Yes, per thousand sheets.

Q. —per thousand of those sheets.

A. Yes.

Q. The contract which you made with the Nekoosa Paper Company, in August 1899, ran until August 1900, when it was renewed in accordance with this endorsement written across its face; is that right?

A. Yes.

Q. Did you have any negotiations with Mr. Nash, the president of the Nekoosa Paper Company, prior to the renewal of that contract in August, 1900, and prior to the organization of the General Paper Company in May, 1900?

A. I did.

Q. When?

A. I can't remember the exact date, but it was sometime prior to it.

52 Q. Sometime in the spring of 1900?

A. Yes.

Q. Where was it that conversation took place?

A. In my office.

Q. State what was said.

Objected to as irrelevant, incompetent, immaterial and no proper foundation laid.

A. The question was taken up of our renewal, and I tried to have Mr. Nash remember the practical verbal agreement we had at the time we gave him our first contract; that he was to take good care of us in the future, and that I had theretofore had a proposition for a five year contract at a price slightly higher than \$1.70, and which I considered a good business deal to close, and which Mr. Nash, seemingly, had forgotten the details of; and he declined to even extend the contract for another year at the price which we had paid him during the lifetime of our contract.

Mr. FLANDERS: I move to strike that out for all the reasons that have been stated.

Q. You speak of this offer for a long time contract, five year contract; that was made prior to the making of the original contract?

A. Prior to the summer of 1899, the time of our first contract with the Nekoosa Paper Company.

Q. Now, in this conversation that you had with Mr. Nash in the spring of 1900, did he refuse to renew this contract on its old terms?

Objected to by defendants for all the reasons stated and as leading and suggestive.

A. He refused to renew that contract, and also desired not to make a contract direct, preferring to make it with the General Paper Company.

53 Q. The General Paper Company had not been organized at that time.

A. Well, through a selling agency. He did not want to make it direct, as I understood him.

Q. Do you remember anywhere near exactly the time this conversation took place in the spring of 1900?

A. No, I can't remember the exact date of it.

Q. How long prior to the month of May was it?

A. I can't remember just what time it was; sometime prior to

this. I was wrong regarding that point about Mr. Nash not wishing to make that contract at that time. That was later on. I misspoke myself there a little.

Q. What was the result of the negotiations at that time?

Same objection by defendants.

A. This is the renewal of the first contracts you are now on?

Q. Yes.

Defendants enter all the objections heretofore stated.

Q. We are talking about the conversation you had with Mr. Nash, some time in the spring of 1900, before the General Paper Company was organized. You said you had a conversation with him about that time. Mr. Nash, you say, was in your office and you took up the question of what was to be done when this contract expired, or took up some question of the renewal of it.

A. Yes.

Q. Now what took place at that time?

A. I tried to get Mr. Nash then to give me a long-term contract, and he declined to do it, said he couldn't do it, and that the price would have to be increased; and it finally resulted in our accepting the contract as endorsed on the original contract.

Q. You say the acceptance of the renewal took place in August 1900?

A. Yes.

Q. At a later conference.

A. At a later conference.

54 Q. Between those two conferences had you had any talk with Mr. Nash on the subject?

— I can't recall whether we had or not. I think I saw Mr. Nash several times, though. I can't remember the details of it.

Q. When did you first hear of the organization of the General Paper Company?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. I can't state offhand, but I think I received a circular that was sent out. Some circular was received. There was current talk that such a thing was a possibility.

Mr. FLANDERS: I move to strike out the latter part of the answer as not responsive to the question, irrelevant, incompetent and immaterial.

Q. I show you Petitioner's Exhibit 101. Is that the circular (or one like it) that you received?

A. To the best of my recollection that is the same circular that I saw.

Q. That was sent to you about the time it bears date, July 5, 1900?

A. I think so, yes sir.

Q. Was that the first announcement you received of the General Paper Company?

A. That is my recollection of it, yes.

Mr. FLANDERS: I wish to renew, with some emphasis, my objection to the counsel leading this witness, and insist that he shall refrain from putting leading questions.

Q. Did Mr. Nash ever say anything to you about his company going into the General Paper Company?

A. Yes sir.

Q. When?

A. After we made that contract.

Q. That renewal contract?

A. Yes.

Q. Or the original contract?

A. Let me see about the dates on there. (Referring to paper.) I think it was the renewal.

Q. Was it before you made the renewal contract, or afterwards?

55 Mr. FLANDERS: Wait a minute. Now I object to that as irrelevant, incompetent and immaterial, and for the reason that the counsel persistently puts in the mouth of the witness the answer that he desires. It is leading and suggestive.

A. My recollection is it must have been after it.

Q. What did Mr. Nash say on the subject.

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Mr. Nash wanted us to have all our bills and everything go through the General Paper Company, to deal with them direct, and he claimed that we would receive the same treatment through them that we would direct, and we declined to do it.

Q. Is that all that was said?

A. He gave a general outline of what they proposed to do.

Q. Well, what was it?

A. To have an agency take charge of their output.

Q. Did he speak entirely of his own mill at that time?

Objected to by defendants as leading.

A. He spoke about the general organization, outlined it.

Q. Well, be a little more definite, Mr. Boyd. I don't quite understand. You say he said something about what they proposed to do, and spoke about a general organization. I don't know what you mean.

A. As he termed it, have a general selling agency.

Q. For whom?

A. For the papers of the State.

Q. For the paper mills of the State?

A. Yes.

Q. Did he mention any other mills that were in this general selling agency?

Objected to as leading.

A. I think he did; I think he mentioned several papers in the State.

56 Mr. FLANDERS: Several papers?

WITNESS: Paper companies.

Q. What did he say they were going to do?

A. Well, he said they were going to——

Q. What was this general organization?

A. He said they were going to have a general organization as sales agency to take charge of the output of the mills.

Q. When you came to renew your contract in the summer of 1900 did you have any bids from any of these other Wisconsin mills besides the Nekoosa Paper Company?

Objected to by defendants as irrelevant and incompetent.

Q. Did the Nekoosa Paper Company come voluntarily and make a bid?

Objected to by defendants for the same reasons and as leading.

Q. My recollection is that it was through conversation I had with Mr. Nash, that our contract was about expiring, that we would have to take up the matter soon. I met him, I think, one day in the Pfister hotel.

Q. Is this the first conversation you are talking about, prior to the organization of the General Paper Company?

A. No, this is in regard to taking up the possibility of another contract.

Q. That is, another conversation, is it?

A. That is another conversation.

Q. Did that take place prior to this one you have spoken of before or not?

Objected to by defendants for all the reasons stated and as leading.

A. Well, I can't tell about those dates. The chances are that it must have been before that. The contract was in 1900.

Q. What was said and done?

57 A. He said he would be pleased to take the matter up again.

Q. Did you do it at that time?

A. Not at that time. He came to my office afterwards.

Q. Did you have any bid from any other source at all, in 1900,

for your contract, aside from this bid by the Nekooma Paper Company when you made the renewal.

Objected to by defendants for the reasons stated and as leading.

A. No sir.

Q. Did you try to get bids anywhere?

Same objection by defendants.

A. I did. I tried to negotiate.

Q. With whom?

Same objection by defendants.

A. With Mr. Brocklebank, of Chicago.

Q. Anybody else?

A. With the Great Northern Paper Company.

Q. Anybody else?

A. Well, I can't recollect whether I had negotiations with any other Wisconsin mills. The chances are I did not.

Q. You stated that in one of your conversations with Mr. Nash he said that he would not be able to deal directly with you and that they were organizing this General Paper Company, and that their business would be done through the General Paper Company.

Mr. FLANDERS: Wait just a moment. That is objected to.

Mr. OLDS: I have not finished my question.

Mr. FLANDERS: Well, I know, but I object to it. It is objected to as assuming something to have been testified to by the witness which the record shows he has not yet testified to.

Q. Now Mr. Boyd, Mr. Nash did deal with you directly in the summer of 1900, when this contract was renewed, did he not?

Mr. FLANDERS: That is objected to for the reason that it assumes something to have been testified to by the witness which the record shows he has not given in evidence and is irrelevant and immaterial.

A. He did.

Q. Was anybody present when this contract was renewed in August 1900, besides Mr. Nash and yourself?

A. My recollection is that there was somebody—I think from his mill—but I have forgotten his name.

Q. You don't remember who that was.

A. My impression is (in fact, I am certain)—there was somebody with him in the office.

Q. Did the General Paper Company have anything to do with the renewal of that contract?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. No sir; Mr. Nash renewed that contract himself.

Q. I show you Petitioner's Exhibit 140. Is that a letter received by you from the General Paper Company about July 16, 1900?

A. It is, yes.

Q. Did that relate to the renewal of this contract with the Nekoosa Paper Company, which was then about to expire?

Mr. FLANDERS: That is objected to for the same reason, and for the further reason that the letter is the best evidence as to what it relates to.

A. Yes sir.

Petitioner offers in evidence Petitioner's Exhibit 140.

Objected to by defendants as irrelevant, incompetent and immaterial.

Q. Pursuant to this letter, Petitioner's Exhibit 140, did the
59 did the General Paper Company take up with you the question of renewal of your contract with the Nekoosa Paper Company?

A. It did.

Q. Through whom?

A. Through the Chicago office, Mr. French.

Q. Did Mr. French come to see you?

A. No.

Q. Write you about it further?

A. Wrote me about it.

Q. Did you take the subject up with them?

A. I declined to negotiate or to deal with the General Paper Company.

Q. You declined to deal with the General Paper Company?

Mr. FLANDERS: Was that declination verbal or in writing?

WITNESS: In writing, I think.

Mr. FLANDERS: I move to strike the answer out on the ground that the letter is the best evidence.

Q. Have you the letter, Mr. Boyd?

A. I must have a copy of the letter at the office.

Q. Will you produce it this afternoon?

A. I will try to do so if I can find it conveniently.

Q. Was the letter of which you speak (the letter which you wrote declining to deal with the General Paper Company), written in reply to the letter Petitioner's Exhibit 140?

Objected to by defendants as irrelevant, incompetent, incompetent and leading?

A. It must have been.

Q. Shortly after the receipt of this letter of July 16th?

Same objection by defendants.

A. I think so, yes sir.

Q. And before you made this renewal, in August 1900, with Mr. Nash?

Same objection by defendants; also on the ground that the letter is the best evidence.

A. It was.

60 Q. Did any agent of the General Paper Company come to see you and have any talk with you about the renewal of the Nekoosa contract in the summer of 1900?

A. I believe not, unless it was an agent of the General Paper Company who was with Mr. Nash. I was trying to recollect whether it was or not; I am not sure.

Q. You don't recollect who that was?

A. I am not sure. My impression was it might have been.

Q. Did Mr. Nash make any objection to dealing with you directly instead of through the General Paper Company?

Same objection by defendants, and as leading.

A. He preferred to have us deal with the General Paper Company.

Q. Well, did he express that preference in any conversation that you had with him?

Same objection by defendants, and as leading.

A. Yes sir, he did.

Q. What did you say to him?

A. We declined to do it.

Q. What did you tell him?

A. I told him I thought we were entitled to deal with him and to receive the treatment that he had promised us when we went to him originally; that he would take care of us fairly, and we didn't care to deal with the new organization, on the general ground that we preferred to deal with the private mill if we could rather than with the organization as generally outlined.

Q. Since the organization of the General Paper Company in the spring of 1900, have you ever received any bids for your contract from any of these Wisconsin mills that you formerly dealt with?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. No sir.

60½ Q. Have you tried to get bids from them?

A. It has been pretty generally understood that it was not possible to get bids and no use trying it.

MR. FLANDERS: I move to strike that out as not responsive to the question, irrelevant, incompetent and immaterial.

Q. Have any of their agents been to see you?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. No.

Q. Now, did you continue to deal directly with the Nekoosa Paper Company under this renewed contract that you entered into in August 1900?

Objected to by defendants for the same reasons and as leading.

A. No, we did not.

Q. Whom did you deal with?

A. The General Paper Company.

Q. Where did the paper come from?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. It came from the Nekoosa mill but was billed by the General Paper Company and we remitted to the General Paper Company.

Q. During the whole period of the contract?

A. No. We started remitting direct to the mill, and after some continuation of that we found it was useless to do it, the bills kept coming from the General Paper Company, so we remitted direct to the General Paper Company.

Q. This renewed contract made in August 1900 was subject to a decline in the market, and again to advance if the market went up. Was there any regulation of price under that term of the contract during its continuance?

Objected to by defendants as irrelevant and immaterial.

61 A. I didn't understand that.

Q. Was there any regulation of the contract during the term of the contract?

A. No.

Q. Did the price remain the same?

A. The price remained the same.

Q. No reduction or advance?

A. Yes, there was. You mean, that is the second contract.

Q. Yes, under the renewed contract.

A. Yes, there was a decline in August 1901.

Q. State how much it was.

A. It declined to \$2.05.

Q. Was there any further alteration of the price under that contract?

A. None.

Q. Was that regulation of the price brought about through negotiations with the Nekoosa Paper Company or with the General Paper Company?

Objected to by defendants as irrelevant, immaterial and leading.

A. Oh, that was a voluntary act on the part of the company.

Q. Of which company—the Nekoosa Paper Company or the General Paper Company?

A. The General Paper Company.

Q. That is, the general market price went down to \$2.05, and they reduced it, is that right?

Objected to by defendants as irrelevant and immaterial.

A. So we were informed, yes.

Q. I call your attention to Petitioner's Exhibit 141. Is that a letter received by you from the General Paper Company with relation to this reduction in price?

A. It is.

Q. That is the reduction you have been speaking of?

A. Yes.

Petitioner offered in evidence Petitioner's Exhibit 141.

No objection.

62 Q. Was this contract, with the negotiation which ran until January 1902, further renewed with that company?

A. It was not.

Q. Did you attempt to renew it with the Nekoosa Paper Company?

Objected to by defendants as irrelevant, incompetent, immaterial and leading.

A. We did not.

Q. Did that company or any of its representatives offer to renew it or attempts to negotiate with you on the subject?

Same objection by defendants.

A. No sir.

Q. Did you receive any bids from any of the Wisconsin mills the General Paper Company for your contract at that time?

Same objection by defendants.

A. We did not.

Q. Did you get any bids from any source at that time for your contract?

Same objection by defendants.

Q. I mean at or about the time of the expiration of the renewed contract in January, 1902?

A. Yes, we did.

Q. From whom?

A. From Mr. Bouer, of Milwaukee, a broker.

Q. Did you have any negotiations with the General Paper Company at that time?

A. We had.

Q. Did its representatives call upon you?

A. They did.

Q. Who called?

A. Mr. Mendsen, their regular man.

Q. E. B. Mendsen?

A. I think that is his name.

Q. When did he come to see you, if you remember?

A. Why, I don't know as I could tell the date; it must have been pretty near the end of the contract.

Q. Along in December, 1901?

A. December, 1901, I should think.

Q. Did you discuss the subject of making a new contract with Mr. Mendsen?

A. Yes, we talked over the outlook.

Q. What was said?

A. Why he told me in a general way what the tendency of the cost of print paper was and about what the price would be.

Q. Did you make a contract with him?

A. Did not.

Q. Did you talk prices with him?

Mr. FLANDERS: Mr. Olds, why don't you let him finish his answer? You asked him what the conversation was, and you broke right in and stopped him.

Mr. OLDS: If the witness wants to state it I have no objection.

Mr. FLANDERS: When he starts to make an answer I wish him to finish it.

Mr. OLDS: You can ask him about that, if you want to.

Mr. FLANDERS: No, I am not obliged to. I am entitled to the answer.

WITNESS: He told me about what the cost would be of print paper, and told us what we would have to pay.

Q. What did he tell you you would have to pay?

A. About \$2.30. I told him that that was almost prohibitive, couldn't stand for it, and he came down then; said it would be about \$2.25 and got down to \$2.20.

Q. Got down to \$2.20, did he?

A. Yes.

Q. Was this all in one conversation that you had with him?

Objected to by defendants as incompetent, irrelevant, immaterial and leading.

A. To the best of my recollection we had with him.

Q. That was the first conversation you had with him?

A. Yes. I don't know as he went to \$2.20 at that time. My recollection is that he went down to \$2.25 at that time.

Q. Did you have more than one conversation with him?

A. Yes, I had a conversation with him later on, about the time the contract expired.

Q. And what was said at that conversation?

A. Well, he took up the subject again and started in on the price; I think he started it at \$2.25, where he had left off, and then went to \$2.20. I think then he stated that he couldn't do anything more until he talked with Mr. Stuart, in Chicago, and he went out; and after a while he said he had talked with him and said he couldn't do any better, and he thought he would prefer to have Mr. Stuart take the matter up personally.

Q. Did that close your negotiations?

A. That closed our interview.

Q. Did Mr. Stuart take it up with you subsequently?

A. Yes, sir, he did.

Q. How long after?

A. It was some little time after that. A short time.

Q. Was it in December, 1901, or January 1902, or when?

A. I think it was in January.

Q. In Chicago or in Milwaukee?

A. In Milwaukee.

Q. Where?

A. At my office.

Q. State as nearly as you can remember the conversation with Mr. Stuart on that subject.

A. Mr. Stuart came into my office in the afternoon. We talked the matter over. He started at a price of \$2.20, telling me why it had to be that and the reason for it, that prices were going up, and cost and everything was higher, and that it would have to be that; but he said he wanted our order, and made us a special proposition, a price of \$2.10, and I declined to accept it. We kept up the
65 conversation pretty nearly all the afternoon, and the price ran down from that to two cents.

Q. You mean \$2.00 a hundred?

A. Yes, \$2.00. And I finally told him I would close with him at \$1.95, and he said he couldn't do it, it was out of the question. Well, I said, "Think it over during the night." (He said he wasn't going out until the next morning.) I said, "If you conclude to do that we can close up." And I had practically almost gotten to the closing point with him at two cents before putting this question to him, and we decided then to leave the thing open until the next morning, and that is the way the conversation ended.

Q. Where did Mr. Stuart start in when he started bidding for your contract?

A. It was either at \$2.15 or \$2.20—wherever Mendsen left off, I remember.

Q. Did he give any reason or excuse for coming down to \$2.00?

Objected to by defendants as irrelevant, immaterial and leading.

A. Yes, he said he wanted to right some wrong, imaginary or real, that we thought we had there against the company.

Q. What wrong did he refer to, if any?

Mr. FLANDERS: I object to it, and insist that the witness shall confine himself to what was said by Mr. Stuart and himself.

A. Mr. Stuart seemed to agree with us that we had not been treated—at least we claimed we had not been treated right by Mr. Nash.

Q. Just what did you claim to Mr. Stuart?

66 A. We had claimed to Mr. Nash originally, and then of course it was communicated to Mr. Stuart and revived during our conversation, that Mr. Nash had agreed to treat us practically the same as we had an offer from another concern before we went to Mr. Nash, and we had a long-term offer, and when we closed with Mr. Nash I informed him of that and told him we went to him largely on personal grounds, and he agreed to take care of us; and when it came around to the renewal, instead of taking care of us, we were boosted to \$2.15 from \$1.70, and I thought it was unfair treatment and not warranted by the conditions. That was the unfair treatment that was referred to.

Q. And was that discussed in this conversation you had with Mr. Stuart?

Objected to by defendants for the same reasons and as leading.

A. It was taken up. That was given, among the other reasons of his for reducing the price as he claimed down to two cents.

Q. Did you ever hear from Mr. Stuart about this \$1.95 proposition?

A. I did not.

Q. Did you make a contract with the General Paper Company that year?

A. We did not.

Q. Whom did you contract with?

A. With Mr. Bouer.

Q. Had Mr. Bouer, prior to this conversation with Mr. Stuart, made a bid on your contract?

A. He had.

Q. What was his bid, do you remember?

Objected to by defendants as incompetent and irrelevant.

A. \$2.10.

Q. Did you accept that bid later on?

A. I did.

Q. Did you make any attempt to close with the General Paper Company at the proposition Mr. Stuart had made—\$2.00?

Objected to by defendants as irrelevant, immaterial and leading.

67

A. We did not.

Q. Why not?

9—385

Objected to by defendants as irrelevant, immaterial and leading.

A. Well, we discovered that we were uncertain as to what we were to get, we were in doubt. I had listened to talk all the afternoon, that conditions were going certain ways and reasons for high price and everything, and we became apprised of the fact that they were going just practically the other way.

Mr. FLANDERS: Going lower, you mean?

WITNESS: Yes sir.

Q. Well, what I want to get at Mr. Boyd, is why you closed with Mr. Bouer at \$2.10 when you had an offer of \$2.00 from the General Paper Company at the same time?

A. For the same reason that we preferred to deal with Mr. Bouer rather than to deal with the General Paper Company. Things had been misrepresented to us, and we preferred to encourage anything in the way of competition with the General Paper Company, even at an additional expense.

Mr. FLANDERS: I move to strike out the latter portion of the witness's answer as unsupported by the record, incompetent, irrelevant, immaterial and not responsive to the question.

Q. Did Mr. Bouer represent a competitor of the General Paper Company?

Objected to by defendants as irrelevant, immaterial and leading.

A. I presume he did.

Mr. FLANDERS: I move to strike that out.

Q. Do you know anything about it?

A. Well, he sold that paper made by a competitor.

Q. Who is Mr. Bouer?

68 A. Mr. Bouer is supposed to be a paper broker.

Q. Where?

A. In Milwaukee.

Q. And did you contract directly with Mr. Bouer when you made this contract in January, 1902?

A. We did.

Q. For how long?

A. For one year.

Q. Have you that contract?

A. I have.

Q. Produce it.

Witness produces paper, which is marked Petitioner's Exhibit 142.

Q. Is this paper marked Petitioner's Exhibit 142 the contract of which you speak, Mr. Boyd?

A. It is the contract.

Q. This is the original contract made between you and Mr. Bouer January 25, 1902?

A. Yes, that is the contract.

Q. Did Mr. Bouer hold himself up as representing any particular mill or paper company in making this contract?

Objected to as irrelevant, immaterial and leading.

A. He did.

Q. What mill or company?

A. The Great Northern Paper Company.

Q. Did the paper supplied by Mr. Bouer under this contract come from the Great Northern Paper Company?

A. I presume it did, yes.

Mr. FLANDERS: I move to strike that answer out as irrelevant and immaterial.

Q. Do you know?

A. Yes sir, we think it did.

Mr. FLANDERS: I move to strike that answer out for the same reason.

Q. Did all of it come from the Great Northern Paper Company?

A. Not the last part of it.

Q. What do you mean by the last part of it?

A. The last shipments under that contract.

Petitioner offered Petitioner's Exhibit 142 in evidence.

69 Objected to by defendants as irrelevant, incompetent and immaterial.

Q. Was this contract renewed at the expiration of the year for which it ran?

A. It was not.

Q. How long did you continue to receive paper from Mr. Bouer?

A. Till January, 1904.

Q. A year after the expiration of this contract?

A. Yes.

Q. When you speak of the last shipments not coming from the Great Northern Paper Company, you mean shipments under this contract during the year which it ran, or during the other year, during which you continued to receive paper from Mr. Bouer?

A. The last year we continued to receive paper from Mr. Bouer.

Q. What arrangement, if any, did you have with Mr. Bouer at the expiration of this contract in regard to receiving news print paper?

A. Well, we simply kept on paying bills as long as the price remained the same.

Q. The price remained the same—

A. Yes, up to January, 1904.

Q. And this was allowed to run on just as if there had been a renewal of the contract?

A. Practically, yes.

Q. And during that second year where did the paper come from, if you know?

A. I think from the General Paper Company.

Q. How did you pay your bills?

A. Paid out the bills to Mr. Bouer.

Q. As before?

A. Yes.

Q. How do you know the paper came from the General Paper Company?

A. From the marking on it.

Q. The marking on the rolls?

A. Yes.

Q. Was that true during this entire second year you were dealing with Mr. Bouer?

70 A. I don't recollect the entire time, whether it ran exactly the year or not, but it was part of the time, that is, part of the second year.

Q. Did Mr. Bouer have any negotiations with you in regard to the renewal of the contract, Petitioner's Exhibit 142.

A. No. I attempted to renew it with him in 1902, make renewal contract. 1904, I mean.

Q. I am talking about 1903 now.

A. No. Our contract there was for a certain stipulated amount of paper. That ran over a year, and we were not particular in regard to notifying him at the end of the 1000 tons (whatever the contract was), and I guess he felt the same way, and the thing drifted along.

Q. The thing drifted along without any arrangements for renewal at all?

A. Yes.

Q. Until January 1904?

A. Yes.

Q. And during the second year, that is, during the year 1903, if I understand you correctly, the paper came from the General Paper Company?

A. Yes.

Q. Do you know what mill it came from?

A. No sir. I can't tell you the mill now.

Q. In January, 1904, what did you do?

A. I negotiated with Mr. Bouer then.

Q. Negotiated with Mr. Bouer?

A. Yes.

Q. Did you negotiate a contract with him?

A. Yes.

Q. Have it signed?

A. Yes.

Q. Did it go into effect ?

A. Did not.

Q. Have you that contract ?

A. I have.

Q. Is paper marked Petitioner's Exhibit 143, the contract you speak of as having made with Mr. Bouer in the early part of 1904 ?

A. Yes.

Q. Whom did Mr. Bouer represent in these negotiations, if you know ?

70½ Objected to by defendants as irrelevant, incompetent, immaterial and calling for the opinion of the witness.

A. The General Paper Company.

Q. Did he tell you that ?

A. Yes.

Q. Did you ask him anything about the Great Northern Paper Company ?

A. Yes.

Q. What did he say about that ?

Objected to by defendants as irrelevant and immaterial.

A. He said he couldn't get paper.

Q. Couldn't get paper from the Great Northern Paper Company. So that in making this other contract he represented the General Paper Company. Why didn't this contract go into effect ?

A. Mr. Bouer couldn't guarantee me the rate in that contract as being the lowest rate furnished any competitor purchasing paper in our field.

Q. What do you mean by in your " field " ?

A. Any paper in our territory with our circulation.

Q. Did you ask him to make such a contract ?

A. I did.

Q. What did he say ?

A. He said he didn't have the power to do it and could not do it.

Q. Did you have any other bidders on your contract at that time ?

A. No.

Q. None at all ?

A. No sir.

Q. Whom did you make a contract with ?

A. With Mr. Davis.

Q. Who is Mr. Davis ?

A. He is, as I understand, the sales-manager of the General Paper Company.

Q. You mean Mr. John A. Davis.

A. Mr. John A. Davis.

Q. How did you happen to take this up with Mr. Davis ?

A. Through Mr. Bouer, who told Mr. Davis what my objection was, and Davis took it up direct.

- 71 Petitioner offered in evidence Petitioner's Exhibit 143.
 Objected to by defendants as irrelevant, incompetent and immaterial.

Q. Did Davis come to see you?

A. Yes sir, he did.

Q. In Milwaukee here?

A. Yes sir.

Q. About what time? Do you remember?

A. February.

Q. 1904?

A. Yes.

Q. Did you have more than one conference with Mr. Davis on the subject?

A. No.

Q. Well, what took place at this conference you had with him?

A. He came in and we talked the matter over and he named the price and conditions and laid down the contract and I signed it.

Mr. FLANDERS: When do you say that was, Mr. Boyd?

WITNESS: February, 1904.

Mr. FLANDERS: Are you sure about that?

WITNESS: Well, I am not sure, only from the data I have. I think it was February 1904. (Looking at papers.) 8th of February, 1904.

Q. Have you the contract you made with Mr. Davis at that time?

A. I have.

Paper produced by witness, and marked Petitioner's Exhibit 144.

Q. This paper marked Petitioner's Exhibit 144 is the contract, is it?

A. That is the contract.

Petitioner offered in evidence Petitioner's Exhibit 144.

Objected to by defendants as irrelevant, incompetent and immaterial.

Mr. FLANDERS: How long does that contract run, Mr. Olds?

Mr. OLDS: It runs for one year.

Q. Was this contract made out in the form that it now appears at the time it was offered to you for your signature?

- 72 Objected to by defendants as irrelevant, incompetent, immaterial and leading.

A. It was.

Q. Was this typewritten matter written in at the time Mr. Davis presented the contract to you for your signature?

A. It was.

Q. All of it?

A. It was.

Q. The contract was executed in duplicate, I believe. It so recites on its face.

A. Yes.

Q. And this is the copy you kept?

A. Yes.

Q. And Mr. Davis kept the other copy.

A. Yes.

Q. And the other copy which he kept was signed by you.

A. It was.

Q. Was it signed and delivered there in the office?

A. It was.

Q. At this conversation.

A. It was.

Q. Was anything said by Mr. Davis about the approval of any mill?

Objected to as irrelevant, immaterial and leading.

A. Nothing.

Q. Nothing of that kind.

A. No.

Q. Did you talk with Mr. Davis about this stipulation as to a guarantee that you had discussed with Mr. Bouer?

A. I did; I took the matter up with him and told him that we felt it was nothing more than right that we be guaranteed that our competitors were not receiving a discriminating rate against us, and that we had understood that had not been the case always, and we must have such a guaranty. Mr. Davis told us that he would not put such a guaranty in any contract he made, but would give us his verbal guaranty to that effect, and did so.

Q. Did you then sign the contract?

A. I did.

73 Q. Did you have any discussion with him about the price or terms of the contract?

A. Yes, did all I could, and he "raised" me.

Q. Raised you from what? What do you mean?

A. From \$2.10 to \$2.25.

Q. Did you object to the raise?

A. I did, but I had to "see" it.

Q. Beg pardon?

A. I did, yes.

Q. Were you able to procure paper elsewhere, Mr. Boyd, at the time you made this contract?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and I give the counsel notice that I shall insist on my objection that his questions are persistently and unceasingly leading. I assume that he knows how to put questions that are not leading, and I make the objection that he ought to be required to do it.

A. No sir.

Mr. FLANDERS:

Q. Make any efforts to get it anywhere else?

Mr. OLDS: Now Mr. Flanders: I would like to question the witness. I have no objection to your cross-examining him.

Mr. FLANDERS: You put a leading question to him which calls for his opinion, and then drop the question.

Mr. OLDS: I don't agree with you, that that is an improper question. If the court decides with you, it will be all right.

Mr. FLANDERS: If you ask him what he did towards getting bids I have no objection to it, but when you put the answer right in his mouth and ask him to express an opinion I shall interpose my objection.

Mr. OLDS: That is a simple question that calls for a statement of fact, and that is all I ask for.

Mr. FLANDERS: It is an improper way to examine a witness, as you must know, to keep putting leading questions. You have had too much experience not to know it.

Mr. OLDS: I prefer to be lectured by the court, Mr. Flanders.

Mr. FLANDERS: Well, you have got that statement on the record, whether you consider it a lecture or not; it is there.

Q. Mr. Boyd, at the time of the expiration of this contract, Petitioner's Exhibit 144, was it renewed with the General Paper Company?

A. What is that—the 1904 contract?

Q. Yes.

A. It was.

Q. On the same terms?

Objected to by defendants as incompetent, irrelevant, immaterial, leading and on the ground that the contract is the best evidence.

A. The same terms, but not the same price.

Q. Was there any other bidders for your contract in the early part of this year than the General Paper Company?

A. We received some communications from paper brokers, people that we had never heard of in the print paper business before—a Chicago man and one Detroit concern, but we did not consider them seriously.

Q. Why not?

A. We were of the impression that it was a bait thrown out by the General Paper Company.

Mr. FLANDERS: I move to strike out the latter part of the witness' answer as incompetent, irrelevant and immaterial.

WITNESS: So considered by nearly all publishers.

Q. Did any representatives of these outside bidders come to see you?

A. I think there was one man in there; I have forgotten his name. I only saw him about a minute.

Q. Did he make a price—

75 A. Yes.

Q. —that you thought worth considering?

Objected to by defendants as leading, irrelevant and immaterial.

A. No.

Q. With whom did you take up the subject of the renewal of your contract with the General Paper Company?

A. Mr. John A. Davis, sales manager, of general manager, I think he is now.

Q. Did he come to see you?

A. He did.

Q. Have you this last contract you made with Mr. Davis?

A. I have.

Witness produces paper which is marked Petitioner's Exhibit 145.

Q. This paper marked Petitioner's Exhibit 145 is the contract, is it?

A. That is the contract.

Q. This is the original, signed by Mr. Davis on behalf of the General Paper Company?

A. Yes.

Q. And he kept a duplicate signed by you?

A. He did.

Petitioner offered in evidence Petitioner's Exhibit 145.

Objected to by defendants as irrelevant, incompetent and immaterial.

Q. Did you have any discussion with Mr. Davis about the prices and terms?

A. I did.

Q. Prior to making the contract?

A. Yes sir.

Q. What was it?

A. I declined to pay Mr. Davis the price he started to ask me, and we haggled over the thing all of one evening and part of the next morning, and after a very lengthy argument, why, we got together on price, and I signed the contract.

Q. Did he come down from the first price he made.

A. He did.

Q. How much did he come down?

A. About twelve and a half cents.

76 Q. You signed the contract with him at twelve and a half cents lower than the price he started in to name you.

A. Yes sir.

Q. Was this contract signed and delivered in your office at that conference?

A. It was.

Q. As far as you know has it ever been approved or presented for approval to any mill?

Objected to by defendants as incompetent, irrelevant, immaterial and leading.

A. No sir. Didn't have time to present it. It was drawn up in my office.

Q. Were the parts that are written in in ink written in in your office at that conference?

A. They were, yes. Mr. Davis also declined at that time to put the written guaranty in as it appears in the contract. He verbally guaranteed us.

Q. Did you ask him again to make such a guaranty?

A. I did.

Mr. FLANDERS: I move to strike that out as irrelevant, incompetent and immaterial.

Q. Mr. Boyd, have you made serious endeavors to get your supply of paper elsewhere than from the General Paper Company during the last two or three years?

Objected to by defendants as irrelevant, incompetent, immaterial, leading and calling for the opinion of the witness.

A. Yes sir.

Q. What endeavors have you made?

A. I have inquired at the usual places to gain information regarding the conditions.

Mr. FLANDERS: I move to strike that answer out as irrelevant and immaterial.

Q. At what places?

A. I have seen the representatives of the selling agencies and talked with some of them.

Q. With what result?

77 Same objection and as calling for the conclusion of the witness.

A. With no relief from the prices quoted by the General Paper Company.

Q. Have you made any estimate of the increase in cost to you of your paper by reason of the increased price in the alteration in terms of the contract of purchase which appear in the contracts with the General Paper Company, as distinguished from the contracts which you made prior to 1900?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. Yes sir.

Q. Just what sort of an estimate have you made? What is the basis of it?

Same objection by defendants.

A. I had the last year's purchase under the contract with the General Paper Company compared with the last year's contract under what we term an open contract, under their terms and conditions, that is, buying from a private mill direct.

Q. That is, the Nekoosa Paper Company?

A. The Nekoosa Paper Company under the open contract, with its terms and conditions, as against the last contract with the General Paper Company, under their terms.

Q. Well, what difference in cost does that figure up?

Objected to by defendants as irrelevant, incompetent and immaterial.

Mr. OLDS: In a general way, I mean.

A. The last year it amounted to about \$18,000. Considering amount of paper, and price and terms and conditions under which we bought from the General Paper Company as compared
78 with the terms of the Nekoosa Paper Company, made a difference of about \$18,000.

Q. You mean the first Nekoosa Paper Company contract?

A. Yes, the first Nekoosa Paper Company contract.

Q. The one that expired in 1900?

A. Yes.

Cross-examination.

By Mr. FLANDERS:

Q. You compared the increase according to the contract of February, 1904, with the first one with the Nakoosa Paper Company made in August 1899, did you, Mr. Boyd?

A. Yes sir.

Q. Five years apart?

A. Yes.

Q. Or approximately that.

A. Yes.

Q. Five or six years apart. In that five or six years there has been a decided increase in the cost of a great many different articles, has there not?

A. I have been so informed.

Q. Well, your butcher's bills have been at a higher price, haven't they?

A. Yes. And lawyer's fees, too.

Q. I don't know about the lawyer's fees. But the butcher and the grocer and the candlestick-maker, and pretty near everything that is sold has increased in price since 1900, hasn't it?

A. Yes sir.

Q. And how has it been with relation to the quality of the paper that was furnished you, we will say under this contract in 1904, as to how it compared with the quality of the paper that you got previous to August, 1900, 1899 and 1898, along there?

A. Some of it is good and some of it not so good—varied.

Q. Some of which?

A. The paper that we have purchased during those terms from various mills.

79 Q. I know, but as to the quality of the paper supplied under the contracts of February, 1904: how did that compare with the quality of the paper furnished prior to August 1900?

A. I don't think it was so good.

Q. You don't think it was as good?

A. No, sir, take it year in and year out.

Q. What is the fact as to whether there was any depression in the times from 1893 on—1893, 1894, 1895, 1896 and 1897, generally, throughout the country?

A. Panic years.

Q. Panic year 1893, and that continued on for a number of years, didn't — the depression?

A. It did.

Q. And as a matter of fact the depression was worse in 1894, 1895 1896 and thereabouts than it was immediately after the panic, wasn't it?

A. Well, I don't know. It was not in print paper.

Q. Well, I am not talking about print paper now; I am talking about the general condition of the times.

A. Yes, they were worse after 1893 for two or three years.

Q. And that is generally true, isn't it, that the full effects of a panic do not come for several years after?

A. I believe so.

Q. Then, as a matter of fact, times didn't begin to improve much, if any, until 1900, did they?

A. Yes, they improved.

Q. That was about the time the era of prosperity that was to be came on the stage.

A. 1899 was a good year, and 1898.

Q. I am not speaking of the years of the newspaper publishers, but I am speaking of the general condition. Wasn't it in 1900 that the—

A. No, I think it was in 1899 it started to pick up very materially.

80 Q. Well, perhaps it did, but the general increase in business and the era of prosperity above all others up to that time, was in 1900, wasn't it?

A. I think it was.

Q. Now, from that time on there has been a pretty steady increase

in the cost of pretty nearly all kinds of products and of labor, has there not ?

A. I believe so.

Q. Well, why do you qualify it by saying you believe so ?

A. Because I don't know. I don't understand there has been in the print paper business.

Q. Well, you don't know about that, either ?

A. No, I don't, and that is the reason I say "I believe."

Q. I am not talking about print paper, Mr. Boyd ; I am talking about conditions generally. Now isn't it your information to the effect that there has been a general increase in the value of nearly all products since 1900, and in labor also ?

A. Yes sir.

Q. Iron and steel and lumber and those things which are considered the staples of the market, made decided increases didn't they ?

A. I believe so.

Q. Now before 1899 I think you said you had a contract with the Badger Paper Company, or some contract with the Badger Paper Company.

A. Yes, quite a while back.

Q. And you might have applied to the Badger Paper Company in the summer of 1900, might you not, for paper ?

A. No sir.

Q. Why not ?

A. They had been burned.

Q. Before that ?

A. Yes sir.

Q. You did, however, apply to one Brocklebank, you said.

A. Yes sir.

Q. He is the John C. Brocklebank who has been a witness in this case, isn't he ?

A. Yes sir.

Q. And was then and is now the general western agent of the Manufacturers Paper Company ?

80½

A. Yes sir.

Q. Now, you said that under the first contract with Mr. Bouer, the paper at first was supplied by the Great Northern Paper Company, and as a matter of fact the name of that company was mentioned in the contract that was made with Mr. Bouers in 1902. Now why was it that you did not continue to receive the paper of the Great Northern Company ?

A. I don't know ; I never went into that.

Q. Never took any pains to find out ?

A. No sir. Suppose we were getting the price all right, as far as we could hear from our competitors, and the service was very good.

Q. You didn't take any pains to find out why the Great Northern Paper Company did not supply the paper ?

A. No.

Q. And you didn't care?

A. Didn't care.

Q. And you didn't care afterwards when you found that the General Paper Company was supplying the paper under the contract with Mr. Bouer either, did you?

A. No; no, we didn't care.

Q. Now, when the contract with Mr. Bouers was made, in January, 1902, you said that before that you were visited by the agents of the General Paper Company and solicited to enter into a contract with that company.

A. Yes sir.

Q. In December, 1901.

A. Yes sir.

Q. And you knew, of course, that the Nekoosa Paper Company had constituted the General Paper Company its exclusive sales agent.

A. I understood so.

Q. Well, you had been told so by Mr. Nash, hadn't you?

A. Yes.

Q. In the summer of 1900.

A. Yes.

Q. And at that time you were offered the contract with the General Paper Company (at that time or the next month) at at
81 \$2.00 a hundred.

A. Yes sir.

Q. But you didn't or wouldn't close with the General Paper Company at that price, but entered into a contract for the same class of paper with Mr. Bouer at \$2.10.

A. Yes sir.

Q. In the conversations that you had with the agents of the General Paper Company, in December, 1901, or in January, 1902, was there any objection made by them to supplying you with paper manufactured by the Nekoosa Paper Company?

A. I don't think that point was brought up. I think they allowed us to—I am not sure about that. I don't think the point was raised, only that they would furnish a good quality of paper.

Q. In fact all you wanted was a good quality of paper and at a price that was satisfactory?

A. That is what we were after.

Q. You didn't care whether it was manufactured by the Nekoosa Paper Company or anybody else?

A. No sir.

Q. As long as the quality and the price—

A. And the service.

Q. —were what you wanted?

A. That is what we were after.

Q. Now I think you said in December, 1901, your first talk was with Mr. Mendsen, and then later he came and saw you in the same month or thereabouts.

A. I believe that is correct.

Q. Was Mr. T. E. Nash with him at one of those times?

A. I think so. I am inclined to think it was Mr. Mendson who was with Mr. Nash, but I wasn't sure about it and did not so mention it in my first statement.

Q. As I remember it, what you said about somebody being with Mr. Nash was at a previous conference in relation to the renewal.

A. Well, it may have been. There were so many visits I have got them a little confused, but I am sure Mr. Mendson was with Mr. Nash at one time.

82 Q. And would it be your recollection that that was at one of the talks in December, 1901?

A. I wouldn't be sure about the date.

Q. Well, prior to this time when you made the contract with Mr. Bouer. The contract with Mr. Bouer is dated, as I understand it, 25th of January, 1902.

A. 1902.

Q. And you said you had two talks with Mendson in December, 1901.

A. No, I think not. I think I had one talk with Mendson and another one with Mr. Stuart. I think that is my testimony.

Q. You said you had a conversation with Mr. Stuart in January 1902.

A. Yes.

Q. But as I recall your testimony you had two talks with Mr. Mendson in December, 1901, in one of which he came down from \$2.30 to \$2.25, and then I believe you said he could not go lower without consultation with Mr. Stuart, and after he had a consultation with Mr. Stuart he came down to \$2.20. Isn't that what you said?

A. That is my recollection, yes.

Q. Then, there would be two talks with Mr. Mendson?

A. Yes, after he had gone to the phone and back again.

Q. You mean a conversation with Mr. Stuart over the telephone.

A. He told me he had a conversation with Mr. Stuart over the phone.

Q. I don't care what he said. The consultation, if he had one, was with Mr. Stuart over the phone.

A. Yes.

Q. Now was Mr. Nash there with Mr. Mendson either before or after the talk over the phone with Mr. Stuart?

A. He certainly was not there with him at either of those talks.

Q. Either of those. Is it your recollection that there was any talk with Mr. Mendson before this contract with Mr. Bouer was entered into, at which Mr. Nash was present?

83 A. I am not sure Mendson was there at one time with Mr. Nash, but I can't—

Q. You can't locate it.

A. I can't locate it.

Q. This reduction from \$2.15 to \$2.05, by this letter of August 9, 1901, granted by the General Paper Company, as I understood you to say, was without any consultation on the part of the Journal Company?

A. It was voluntary. We were so notified.

Q. Now, you did not close with the General Paper Company at \$2.00, which was the price offered by Mr. Stuart, but did close with Bouer at \$2.10, on or about the 25th of January, 1902.

A. Yes.

Q. And at that time you were, as you said, informed that the prices were going lower.

A. No, I didn't so state. If I did I didn't so intend. I was informed that the prices were going up.

Q. What?

A. Prices were going up.

Q. Informed by whom?

A. Mr. Stuart and Mr. Mendsen both.

Q. Well, I understood you to say that, but I also understood you to say, and have it minuted here,—it may be wrong, but I understood you to say that from other sources you were informed that it was going lower.

A. Yes sir.

Q. So that is right, isn't it?

A. That is right.

Q. Why, then, did you contract with Mr. Bouer at \$2.10 when you were offered it by the General Paper Company at \$2.00 and your information was that it was going lower?

A. Well, there were two very good reasons, at least I thought so; one was we didn't know where we stood with the General Paper Company, or what they would do, or whether we were in at the ground floor or not; and the other was, if the price went lower, with the other the chances were we would get it.

Q. But that wasn't in your contract with Bour, was it?

84 A. No sir.

Q. And the General Paper Company had voluntarily reduced the price from \$2.15 to \$2.05 less than six months prior thereto?

A. Well, that is the fact.

Q. And what do you mean when you say you didn't know where you stood with the General Paper Company?

A. Because the representatives of the General Paper Company had falsified to me.

Q. Well, which ones?

A. Both Mr. Stuart and Mr. Mendsen.

Q. When?

A. In January, 1902.

Q. In what respect?

A. In their general conversation as to the tendency of print paper.

Q. Well, is it not the fact that the tendency of print paper was upwards after that?

A. Not at that time, no sir.

Q. Well didn't it go up after that?

A. It went up to us when we bought outside of it.

Q. Bought outside of what?

A. Outside of the General Paper Company.

Q. Then prices did go up?

A. Not from the General Paper Company.

Q. Well, I am speaking of prices generally.

A. No, the prices didn't go up in general.

Q. Are you sure of that?

A. Not quite sure of it, no; only from their records.

Q. You made a contract in 1904 with the General Paper Company at \$2.25, did you not?

A. Yes sir.

Q. And \$2.25 is a decided advance over \$2.10 and much larger over \$2.00, isn't it?

A. That is so.

Q. Well, then, it is the fact that after the talks between you and Mr. Stuart and Mr. Meudsen the prices of print paper materially advanced?

A. Advanced by them, yes, but not in the conditions.

Q. I am not talking about the conditions; I am talking
85 about the prices.

A. Well I was talking about the conditions. That is my reason for not closing with Mr. Stuart.

Q. You said that their statements were not correct in the fact that they represented that prices were going to advance.

A. They said the conditions were such that prices must advance and went into details about it.

Q. Well, didn't you say a few moments ago that they represented that prices would advance?

A. I don't think so. If I did I should have said conditions.

Q. What do you mean to say now, Mr. Boyd?

A. I mean conditions.

Q. What did they say that you thought was not verified by the facts?

A. Just what I told you.

Q. I know; you say conditions, but you don't detail it, you don't convey any impression to my mind.

A. Well, it didn't convey much to my mind when they told me about it.

Q. What did they say?

A. They told me that the general conditions were such that the prices of print paper would have to go up—be increased.

Q. Now the price of print paper did go up, you say?

A. I think it did, a year after that. I know it did in fact.

Q. Well, didn't it go up during the next year?

A. No.

Q. What?

A. I don't think so.

Q. Are you sure about that?

A. I am pretty sure about it.

Q. You have no records I suppose?

A. I think I have, yes sir.

Q. You had no occasion to keep track of the price of print paper, because you had a contract for a year.

A. Oh, we had other reasons for keeping track of it outside of our own contract.

Q. Oh, you did.

A. We wanted to see how we stood.

86 Q. The renewal of the contract with the Nekoosa Paper Company expired January 1, 1902.

A. Yes.

Q. And your contract with Mr. Bouer was dated January 25, 1902. Where did you get your paper between the 1st and 25th of January, 1902?

A. I think they continued to furnish it.

Q. Who?

A. The General Paper Company.

Q. When did you begin to receive shipments under the Bouer contract of January 25, 1902?

A. I can't tell; I suppose very shortly after that; I couldn't tell you the date.

Q. Well, I suppose you can tell by reference to your books.

A. Yes sir.

Q. The date when the shipments under the Bouer contract began.

A. I believe so, yes sir.

Q. And when the shipments under the Nekoosa Paper Company contract stopped; you can tell that, too?

A. I think so.

Q. And if as a matter of fact you got paper between those two periods from any other source, you can tell from what source or sources you got it and the prices that you paid, can you not?

A. Yes, between the Nekoosa and the Bouer contracts. I think so.

Q. That is, between the time the delivery ceased on the Nekoosa Paper Company contract—

A. Yes sir.

Q. And the time they began on the Bouer contract?

A. I don't know if we could tell which of the General Paper Company mills it came from, unless there should be some notation on the record; there would not be any reason why we should.

Q. Well, I am not particular about what mill it came from, but if you got it from the General Paper Company—

A. That would show on the records of course.

87 Q. I say if you got it from the General Paper Company, between the expiration of the Nekoosa contract and the beginning of delivery on the Bouer contract, that of course your books will show.

A. Yes sir.

Q. Or if you got it from the International Paper Company, or the Manufacturers Paper Company, or anybody else, or Mr. Bouer, that would show too, wouldn't it?

A. Yes.

Q. You said in answer to Mr. Olds that you were using now approximately a thousand tons a year, as I remember it.

A. Yes sir.

Q. And before that it had been 750 tons and upwards, perhaps.

A. I told him it varied with the growth of the paper.

Q. Well, I know, of course; the paper has pretty steadily increased in the amount of paper that it uses, hasn't it?

A. Yes sir.

Q. Take 1902, when this Bouer contract was executed: can you tell approximately about how much paper was being used then?

A. I can't tell exactly. I could tell if I looked at the records. I suppose about 700. I am not sure.

Q. I was going to ask you to look at the records and find out where you got your paper in this intermediate time, and the prices paid, and you might at the same time look and see how much paper you were using in January, 1902, because you can look them up at the same time.

A. Yes. You want that you say?

Q. Yes. I want to know from what sources the Journal got its news print paper after the Nekoosa Paper Company delivery ceased and before the delivery under the Bouer contract began, and the prices paid for such paper and the quantity; and I also want to know approximately the amount of paper being used by the Journal in January 1902. Now I understood you to say—probably your investigation will show, but I understood you to say that be-

88 between the time that the deliveries under the Nekoosa Paper Company contracts ceased and the time when they began under the Bouer contract, that you got other paper at high higher prices. Did I understand you correctly?

A. I don't think I so stated.

Q. I am not sure that you did. I have got that memorandum here.

A. No.

Q. Now you said that the Bouer contract ceased, as in fact it did, I believe, at the end of the year, which would be sometime in the early part of 1903.

A. No. I don't think I stated that.

Q. The contract?

A. No.

Q. The contract is for one year?

A. Well, it is for a stipulated amount; it is for a thousand tons. Of course for a year—we have got a right to use that if we happen to grow to that extent; if we didn't, we could use it at any time.

Q. Well, it was for the thousand tons.

A. Yes sir.

Q. Now that thousand tons didn't cover the period between January 1902 and January 1904, did it?

A. I don't think so.

Q. There must have been a period before February 1904 when the thousand tons had been used up.

A. That is so.

Q. That is right.

A. Yes sir.

Q. Now then, intermediate to the time that thousand tons was used up and the contract of February, 1904, where did you get the paper that you used?

A. I don't know; we bought from Mr. Bouer, but I think most of it came from the General Paper Company.

Q. Well, it was bought through Mr. Bouer?

A. Yes.

Q. And at what price?

A. The same price.

Q. The same price specified in the contract of January 1902?

A. Yes.

89 Q. Are you quite clear about that, or are you stating that from recollection?

A. No, I am quite clear about it.

Q. Have you made an examination to find out?

A. I have a notation to that effect.

Q. Well, I know, but what I am getting at, Mr. Boyd is this: whether you have refreshed your recollection on that point from an examination of your books or papers, or whether that is simply your recollection generally.

A. Well, I have the records here, Mr. Flanders, as given me from the records.

Q. By one of your employees?

A. Yes sir.

Q. Well, I will ask you anyway to see what prices you paid for paper between the time that the 1000 tons was consumed and the contract of February 1904.

A. Yes.

Q. This contract of January 25 with Mr. Bouer concludes as follows: "This contract shall take effect with the first delivery of paper as hereinbefore specified and shall terminate one year from the date of the first order."

A. Yes.

Q. At any rate, if you get that information I have asked you for, I think that will probably cover what I am trying to get at. Now

then, why didn't you continue to get the paper from the Great Northern Paper Company?

A. Couldn't.

Q. Well, I know, but why?

A. Mr. Bouer claimed he couldn't supply it.

Q. Oh! Any reason given?

A. Oh, you mean after our 1000 tons was up?

Q. Yes.

A. We didn't pay any attention to it; we didn't know we were not getting it until we began to receive the other.

Q. Now after the 1000 tons expired, or was used up, you still got paper from Mr. Bouer?

A. We bought from Mr. Bouer.

Q. But as a matter of fact you found he was selling you the General Paper Company paper?

A. I believe so.

90 Q. You got the bills, you say, from the General Paper Company?

A. No sir.

Q. Why did you say you did get them from the General Paper Company?

A. I didn't say so; I didn't mean to say so, if I did. I don't think I said so.

Q. Well, perhaps I misunderstood you. From the time that the 1000 tons was used up down to the new contract of February, 1904, as I understand it, you kept getting your paper from Bouer?

A. We did. That is what I stated.

Q. Now where did that paper come from?

A. I don't know. We supposed from the General Paper Company—the last part of it, during that period.

Q. Now then, that is what I understood you, Mr. Boyd.

A. No; you said get our bills from there.

Q. I thought you did say the bills.

A. No; that is what I stated I didn't say.

Q. What made you think it came from the General Paper Company?

A. The markings on the rolls.

Q. And the bills, did they come from the General Paper Company or from Bouer?

A. Came from Mr. Bouer.

Q. Did you have any knowledge or information as to how Mr. Bouer got the paper from the General Paper Company?

A. No; only knew that he was a broker and that he had such relations with them that he could easily supply it. It was his business.

Q. In January 1902 did you take any steps to get any bids from anybody except the General Paper Company and Bouer?

A. I did. In January 1902?

Q. Yes?

A. I think I did.

Q. You think you did.

A. Yes.

904 Q. Well, with whom did you negotiate the deal?

A. I tried to get it from Mr. Brocklebank.

Q. Yes, representing the Manufacturers' Paper Company.

A. And also from the International of New York.

Q. Did you or did you not get any better prices from either of those than you got from the General Paper Company?

A. I did not.

Q. Did you make any efforts to get them from anybody else?

A. Nobody else to get from.

Q. Well then, you didn't make any efforts.

A. Not outside of those I have mentioned.

Q. Well, there were competing mills, weren't there?

A. Not that I heard of, that anybody could locate.

Q. Q. The Patent Paper Company manufactures news print?

A. I don't know about it, if there was such.

Q. There was also a paper manufacturing company at Niagara Falls, wasn't there?

A. Not submitting prices in this field.

Q. I am not talking about whether they were submitting prices.

A. I don't know about that.

Q. You didn't take any steps to inform yourself of anybody except the International and the Manufacturers and the General Paper Company.

A. And the Great Northern.

Q. Well, the Great Northern had stopped supplying you?

A. Well, I say those are the only ones I inquired about, because they were the recognized sources.

Q. You didn't inquire about the Great Northern when you came to want to make a contract in 1904, did you?

A. I did.

Q. I thought you said the Great Northern had before that stopped furnishing the paper under the other contract.

A. Well, they had, as far as that goes, but we were getting paper at the same price. It didn't make any difference to us whom
91 we bought from.

Q. Now what steps did you take to get any paper from the Great Northern Paper Company in 1904?

A. We made inquiries and we found we couldn't better the conditions.

Q. Whom did you make inquiries of?

A. Mr. Bouer.

Q. Anybody else?

A. I think not. I don't know whether Mr. Mix was with them then or not. I think he was just about to leave them.

Q. What steps did you take to find out whether you could get it from the Manufacturers' Paper Company?

A. I saw Mr. Brocklebank.

Q. And what steps with relation to the International Paper Company?

A. I saw the representative in New York.

Q. In New York.

A. Yes.

Q. This contract of February, 1904, with Mr. Bouer, did that expire in a year or two or don't you remember?

A. In February 1904 didn't have a contract with Mr. Bouer. It is not executed. That is the one I declined to—

Q. Well, it is executed. Look at it.

A. Well, I understand that; it was conditionally so between Mr. Bouer and myself.

Q. Conditioned on what?

A. On guaranteeing price as being the lowest price quoted in this field.

Q. So you declined to have it go into effect.

A. With Mr. Bouer.

Q. That is what you mean.

A. Yes.

Q. And then you made a contract with the General Paper Company?

A. With Mr. Davis.

Q. Well, that was the time that you endeavored to get paper from the Manufacturers' Paper Company and the International Paper Company, wasn't it?

A. Yes.

Q. In 1904.

A. Yes.

92 Q. And the contract price under the February 1904 contract was \$2.25 per hundred pounds?

A. \$2.25.

Q. And the contract price under the April 1905 contract, price to be \$2.02½ per hundred pounds.

A. That is right.

Q. Now did you make any efforts to get bids from others in April 1905?

A. Yes, sir.

Q. From whom?

A. Well, not from any of these other mills.

Q. Well, I didn't ask you whom you didn't make the effort to get them from, but whom you did make the effort to get them from.

A. Well, I will have to decline to answer that. There were very good reasons for declining to do it, at least as a private arrangement.

Q. Well, I am not particular about going into any private arrangement, Mr. Boyd, but there certainly cannot be anything private about whom you made the application to.

A. Yes, that was the private part. It was a combination deal that I don't care to divulge.

Q. I am not talking about a combination deal but the source from which the paper was to come; I will put it in that way.

A. It was to come from the General Paper Company.

Q. I don't want to ask you about any of your business secrets, I don't care enough about them for that. Of course we could probably insist upon the answer, but I don't care about that. What I want to know is, from what source the paper was to come.

A. From the General Paper Company.

Q. To be manufactured by whom?

A. The General Paper Company mills. That was not the named condition in that, but that was known to be the—

Q. You mean by that that you negotiated (you needn't give any names for the present) with some other agent of the General
93 Paper Company than Mr. Davis?

A. No, I don't mean to state that at all. I mean to state that the negotiation was carried on with Mr. Davis, but that was not the only mill that was being negotiated with.

Q. That was not the only company—

A. Yes.

Q. —that was being negotiated with?

A. Or the company was not confined to the General Paper Company—the other company.

Q. Now why can you not, or will you not, state from what source the paper was to come, with whom these other negotiations were being carried on?

A. Because that is an entirely private affair, arrangement.

Q. Well, then, could you or could you not get better terms from these other parties with whom these negotiations were being carried on than you got in this contract with Mr. Davis?

A. I think I could not have got the price I had with Mr. Davis if I had not had the other deal on.

Q. Well, now, Mr. Boyd, I regret to say that that is not an answer to my question.

A. Well, I know, but that is the fact.

Mr. FLANDERS: I shall have to move to strike it out as not responsive to the question, and I will ask the examiner to read you my question.

The question was read.

A. I don't know.

Q. Were there any other terms offered you than such as are incorporated in this contract with Mr. Davis?

A. I don't think so, up to that time.

Q. What?

A. Not when I accepted it.

Q. You mean up to the time you executed the contract with Mr. Davis no better terms had been offered you from any source than are contained in this contract with Mr. Davis; is that what
94 you mean?

A. Well, it is hard for me to make that statement. It was an optional matter. It was practically a stand-off.

Q. Well, Mr. Boyd, you can certainly tell whether better terms were offered you than \$2.02½.

A. Well, I don't know but I made a mistake in signing with Davis.

Q. Now I didn't ask you that. I move to strike that answer out as not responsive to the question, irrelevant and immaterial. Now I say that you can certainly tell whether better terms were offered you before this contract was signed with Mr. Davis and \$2.02½ a hundred, can you not? without entrenching upon anything that you want to keep private?

A. I really can't answer you whether it was better or not.

Q. Why not?

A. Because certain things might develop that would have been better, but up to date it was an even thing.

Q. I am not talking about what developed afterwards, but the price,—whether you were offered any better price than \$2.02½ before you signed that contract with Davis?

A. No, I think not.

Q. Now, then, I notice, Mr. Boyd, that according to this contract of January 1902, with Mr. Bouer, that the terms were net cash in thirty days.

A. Yes.

Q. That was not a very extraordinary requirement, was it?

A. I think so.

Q. Extraordinary—

A. It is unusual in business affairs, in any line of business.

Q. But you made that contract with Mr. Bouer?

A. Well, the same terms as all other contracts at that time.

Q. Well, that is what I mean. It was not an unusual proviso at that time, was it?

A. Not that I know.

Q. And in 1904 you made a contract with Mr. Bouer by the terms of which it was provided or in which it was provided that the terms should be net cash. That is even more stringent than net cash at the expiration of thirty days, isn't it?

A. It should have been thirty days in that, from the talk.

Q. Well, it doesn't say so.

A. It didn't amount to anything anyway. That was the talk and that was the contract; it wasn't put in there; that was a mistake.

Q. Well, that is quite an important feature of the contract, isn't it,—

A. It might have been if there had been any question about it.

Q. —as to whether it should be net cash, or net cash after thirty days or sixty days? That to a business man makes a good deal of difference, doesn't it?

A. I should think it would, yes sir.

Q. But you signed the contract without any allowance of time on the basis that it should be a net cash payment?

A. Well, if I did it was through imperfect contract in executing. It was not a contract that was intended to be signed or executed between us.

Q. Well, have you any doubt you did sign it?

A. None at all, if you say so.

Q. There it is right at the foot of the page (handing the contract to the witness).

A. It was supposed to be thirty days. That is all right. It was supposed to be thirty days and was thirty days; never was any question about it.

Q. But you have made an estimate here of \$18,000.

A. Yes sir.

Q. Paid by the Journal Company over and above what? How did you get at that estimate?

A. Well, just as is stated: the difference in the terms, the price and the conditions of the contract made with the last mill,
96 what we would call an open contract, from the last contract we had with the General Paper Company.

Q. What do you mean by an open contract?

A. Not an open contract—a contract with an open mill, a mill not in the General Paper Company.

Q. You mean before the organization of the General Paper Company?

A. Before the organization of the trust.

Q. But you didn't intend to term it as an open contract?

A. No. I mean with a mill outside the trust.

Q. Now, how did you figure that estimate, as to quantity, for example? What quantity did you figure? Did you figure the paper bill of the Journal under the Nekoosa Paper Company contract, and the paper bill of the Journal in 1904 and 1905? Is that the way you did?

A. No, took the difference in the price all through the contract, on every element of the contract that entered into the whole.

Q. What I want to know is what elements you considered entered into the whole?

A. Well, the total cost of white paper—

Q. In 1899, for example.

A. In 1899, at the price—

Q. That is, the total cost of the white paper used by the Journal in that year?

A. Certainly. No, I took the difference in the price of the Nekoosa Paper Company contract and applied it to the total difference in the weight, or the total weight on the 1904 contract.

Q. Oh, I see.

A. The differential in price.

Q. In other words, if your contract in 1899 was one dollar and seventy cents—

A. And the contract this last year was \$2.25.

97 Q. —and your contract in 1904 was \$2.25, then you figured the weight of white paper used by the Journal in 1899 at a difference of fifty-five cents?

A. Yes sir.

Mr. OLDS: That is one element.

WITNESS: Yes, that is one means; that is one of the items in it.

Q. What are the other items?

A. The basis of the waste returned, the discount, the weight of the wrappers on the rolls, the increased weight forced on us, the increase in postage and the difference in the freightage or cartage from the train to the sidewalk.

Q. Have you got in the estimate now, as you have stated it, all the items that enter into it?

A. I think so, yes sir.

Q. You make no allowance for the increase in cost of anything, from natural causes?

A. Well, I am not so sure there are increases.

Q. I can't tell the things you are not sure of; I am not asking you for those.

A. Well, I didn't consider that until I knew it.

Q. Well, I know, but I didn't ask you that, Mr. Boyd. You did not as a matter of fact——

A. No sir, I did not.

Q. —make any allowance for increase from natural causes?

A. I did not, not a bit; I took them just as they were.

Recess until two o'clock p. m.

Q. Did you get that information, Mr. Boyd?

A. Yes sir. As far as it could be gotten. I got what you wanted in the way of average amount used in 1902.

Q. How much was it?

A. Practically 750 tons, as near as I could reduce it down by just taking the figures. You see the price changed once in that

98 year, August, \$2.15, and then dropped five cents, to \$2.10. That made an average of about seven months with one and five with the other.

Q. About 750 tons for the year.

A. Yes sir.

Q. And the other information, about when the deliveries under the Nekoosa contract stopped in January, 1902.

A. The last delivery we find we had from the General Paper Company under the Nekoosa contracts was December 31, 1901.

Q. And when did they begin under the Bouer contract?

A. Under the Bouer contract February 8, 1902—under the contract, but we got sample paper, a sample car, in January.

Q. A sample car from Bouer?

A. Yes from Bouer, to see what the quality of the paper was, you know.

Q. What price?

A. \$2.10.

Q. Was that the only paper that you got between the termination of the Nekoosa delivery and the beginning of the Bouer contract?

A. Yes sir. We must have had a little paper on hand, and then getting in the car the last day of the year—

Q. How many tons in a car?

A. It varies.

Q. About?

A. I don't remember now; the manufacturers could tell you better than I.

Q. Not over twenty or twenty-five, I suppose; perhaps not that.

A. I don't know just exactly how that runs. It varies according to the size of the roll. We get small rolls and the large rolls and I don't know just exactly what they figure a car.

Q. Well, a car of paper, twenty or twenty-five tons is a pretty good sized car, according to my recollection.

A. I should think so.

Q. Well, now, you said that before you had the first Nekoosa contract, that is, the one that began in 1899, you had bought
99 paper of the old Thilmany Paper Company and the Badger Paper Company, as I remember it.

A. And others, I said; Grand Rapids Pulp and Paper Company.

Q. Grand Rapids Pulp and Paper Company?

A. Yes.

Q. Did that comprise the list?

A. No. I think we bought paper from various sources. We got one or two cars from different concerns all over the country.

Q. Well, did your main supply come from the Thilmany Company and the Badger Paper Company?

A. The Badger Paper Company, Grand Rapids and Nekoosa.

Q. And Nekoosa?

A. Yes sir.

Q. Before the Nekoosa contract?

A. Before the Nekoosa contract.

Q. And then when you came to renew the Nekoosa contract in August 1900, as I understand you the only places you attempted to get paper from were the Thilmany Company and the Grand Rapids Pulp and Paper Company—

A. No, I didn't say the Thilmany Company. They had ceased doing business, as far as I knew, in print paper.

Q. —and the Badger Paper Company?

A. The Badger Paper Company had gone out too.

Q. And then you tried to get it from the Grand Rapids Pulp and Paper Company?

A. No.

Q. From whom, then?

A. We tried from Bouer, from the Manufacturers' Paper Company, from the International and the Great Northern.

Q. In August 1900, was that?

A. Yes.

Q. The Great Northern you had it from—

A. Afterwards.

Q. —afterwards?

A. Yes.

100 Q. Well, of course, Mr. Boyd, you don't wish to be understood as saying that the Manufacturers' Paper Company and the International Paper Company were the only sources from which you could have got news print paper outside of the General Paper Company?

A. The only sources I knew of.

Q. Well, didn't you know that there were other mills engaged in manufacturing print paper?

A. Yes.

Q. Quite a good many of them, weren't there?

A. I presume there were.

Q. The Outegamie Paper Company was engaged in manufacturing paper at that time, wasn't it?

A. I didn't know about it.

Q. You don't know whether it was or not, then?

A. I don't know, no sir.

Q. Then, as a matter of fact, you didn't make much inquiry to find out who was manufacturing it, did you?

A. Yes sir, I prosecuted my search as far as I could and as far as I knew how.

Q. If the Outegamie Paper Company was manufacturing print paper up here at Kaukauna, Wisconsin, and you didn't find out about that, would you consider that your search was a very thorough one?

A. It might have been and still overlooked them if they were not catering to the general field.

Q. How about the Patton Paper Company of Appleton, Wisconsin? Did you know they were selling paper?

A. Generally understood their prices were in harmony with the other prices quoted.

Q. I didn't ask you that.

A. That is the reason I didn't search for it.

Q. You didn't know the Patton Paper Company was manufacturing paper then?

A. No sir, not and selling it.

Q. You didn't know that?

101 A. I didn't know that separate from the others.

Q. How is it about W. D. Boyce, down at Marseilles, Illinois? Was he not manufacturing print paper?

A. I didn't think so, not at that time.

Q. Do you know about that?

A. No sir.

Q. And the Winnebago paper mills, of Neenah, Wisconsin, were they manufacturing print paper?

A. I didn't know that.

Q. How about the Alexandria Paper Company? Did you know about that?

A. Yes, but the information I got led me to the conclusion there was no use trying to get paper from any of those mills. I didn't know that.

Q. Now, Mr. Boyd, I didn't ask you that, and I ask to strike that answer out as not responsive to my question, and as irrelevant and immaterial. Now kindly listen to the question and answer that. Did you know about the Alexandria Paper Company? Did you know that it was manufacturing print paper at that time?

A. Not selling it to the trade, no.

Q. Well, did you know anything about it?

A. Only hearsay.

Q. You didn't make any application to them, at any rate?

A. No sir.

Q. Nor to the Outegamie Paper Company.

A. No sir.

Q. Nor to the Patton Paper Company?

A. No sir.

Q. Nor to Boyce?

A. No sir.

Q. Nor to the Winnebago paper mills?

A. No sir.

Q. And did you know the fact to be that the Kimberly and Clark Company had mills, that were manufacturing print paper, that were not connected with the General Paper Company?

A. I did not.

Q. Did you make any inquiry of them for prices on print paper?

102 A. I can't state positively. My impression is I did talk with Mr. Stuart once about it, but just what the date was I don't remember. My impression is I had a conversation with him and he told me he had closed up; the mill orders were filled, that is my recollection of it.

Q. Well, can you place any such conversation as that as to time or place?

A. I can state the place, but not the exact time. It was in the Pfister hotel.

Q. Approximately what time was it?

A. I can't state that. It was in the summer season, I remember that very well. I remember that from the fact that he was going up yachting.

Q. Did you make any inquiry of the Cheboygan Paper Company to see if you could get news print from them?

A. No sir.

Q. Do you know whether or not they were manufacturing it?

A. I did not.

Q. How about the Elkhart Paper Company?

A. I believe we heard something about them but their product was considered very inferior.

Q. Well, you didn't make any inquiry of them?

A. Not direct, no sir.

Q. How about the Anderson Paper Company, of Anderson, Indiana?

A. Didn't make any inquiry.

Q. Well, you didn't make very thorough inquiry then, did you, Mr. Boyd?

A. I think I did, yes sir.

Q. At any rate, you have told us all the inquiries you have made?

A. Yes, and it is considered quite thorough in our line of business.

Q. I didn't ask you that, either, Mr. Boyd. At any rate you have told us all the inquiries you did make?

A. Yes sir.

Q. And you didn't find out that right up here at Neenah, and Appleton and Menasha there were mills competing with the General Paper Company in this business, and if you did it didn't
103 interest you enough to find out what they would sell you paper for?

A. I didn't hear it from any publishing company.

Redirect examination.

By Mr. OLDS:

Q. Mr. Boyd, as far as you could ascertain at the time Mr. Flanders has been questioning you about, were any of these mills that he has mentioned in the market to supply paper if the publishers wanted to buy it?

Mr. FLANDERS: That is objected to as incompetent, irrelevant, immaterial, leading, and calling for the opinion of the witness, and for the further reason that the witness has testified that he has told all he knows *all he knows* about it.

A. We never had a proposition from any of those paper mills, and I don't know of a publisher of my acquaintance who ever did have a quotation from them in that time. Never heard of them as being a factor in the field.

Q. Do you know of any publisher who has ever bought paper from the Cheboygan mills, for instance?

Mr. FLANDERS: Objected to for all the reasons stated.

A. I don't know a publisher that has purchased paper from any of those mills except possibly the Patton Paper Company. I don't know whether we have bought paper from the Patton Paper Company, whether it came in under other orders or not; I think not.

Recross-examination.

By Mr. FLANDERS:

Q. The fact that you never heard of any publisher buying paper from any of these concerns that I have mentioned to you would not have been any objection to you if you could have got satisfactory quality and price, would it, Mr. Boyd?

A. No sir.

104 Q. But you didn't take pains to find out whether they were in existence, or what kind of paper they sold, or at what price.

A. Oh yes, I took pains. I asked brokers.

Q. You didn't know about these companies?

A. I asked brokers who were supposed to know all about their fields and they told me there was none.

Q. What broker did you ever ask?

A. I asked Mr. Bouer, the only one that was here.

Q. Did you ask others?

A. He is the only one I know of that deals in print.

Q. Well, is he the only one you asked?

A. He is the only one I asked in this field.

Q. Well, any other field.

A. Mr. Brocklebank was supposed to be in touch with a great many of these independent mills, as they are called.

Q. In the East or here?

A. Both. So I was informed. I don't know whether it is a fact or not.

Q. Did you ask Brocklebank anything more than to get a price?

A. Yes, I asked him—I got such information about the particular line of business as I could gather.

Q. What information did you get from him?

A. It was either one of two things: he could not supply or there was no field for it.

Q. And that was the information you got.

A. That was practically the conclusion of the interview, yes.

By Mr. OLDS:

Q. What do you mean by no field for it?

A. I mean there was no supply.

Q. Outside the General Paper Company and the International.

A. Yes, the generally recognized sources of supply.

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Subscribed and sworn to before me this — day of July, 1905.

Special Examiner.

106

MILWAUKEE, WIS., June 27, 1905.

The hearing was resumed before the examiner pursuant to adjournment.

Present: On behalf of the petitioner, Mr. Robert E. Olds; on behalf of the defendants, Mr. James G. Flanders.

EDGAR COLEMAN, being duly sworn as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. OLDS:

Q. What is your business, Mr. Coleman?

A. Publisher.

Q. Here in Milwaukee?

A. Yes sir.

Q. Of what paper?

A. Milwaukee Herald.

Q. Do you control more than one publication?

A. Yes sir.

Q. What are they?

A. An agricultural paper.

Q. What is the name of it?

A. —, Agricultural and Horticultural Journal.

Q. And the Herald is a German paper also?

A. Yes sir.

Q. How long have you been the publisher of these papers?

A. Personally, about 22 years.

Q. Have you, personally, had charge of the purchase of news print paper for the Herald Publishing Company?

A. Yes sir.

Q. For how long?

A. About 18 years.

107 Q. State the conditions under which you bought news print paper prior to 1900, with reference to the existence or non-existence of competition for your contract.

Objected to by defendants as irrelevant, incompetent and immaterial.

A. There was active competition.

Mr. FLANDERS: I move to strike the answer out for the reasons stated and as containing simply the opinion of the witness.

Q. Among what parties?

Objected to by defendants as irrelevant, incompetent and immaterial.

Mr. OLDS: That is merely a general question. I do not ask you to name them.

A. Amongst several paper mills.

Q. Located where?

A. In Wisconsin.

Q. Can you name some of them?

A. The Park Falls Paper and Pulp Company, the Wisconsin River Paper & Pulp Company, George A. Whiting, the Flambeau Paper Company—

Q. That was the successor of the Park Falls Paper & Pulp Company, was it not?

A. Yes sir. And the Nekoosa Paper Company.

Q. Did you ever buy of the Winnebago Paper Company?

A. Yes sir.

Q. The Dells Paper and Pulp Company?

A. No sir. I have reference now, of course, to print paper.

108 Q. Yes, that is all I am asking for. Did you buy paper from all of these mills that you have mentioned at one time or another?

A. Yes sir.

Q. Did they bid against each other for your contracts from time to time?

Objected to by defendants as leading, irrelevant and immaterial.

A. Yes sir.

Q. Can you give the names of the parties from whom you purchased news print paper from about 1896 down to 1900?

A. Yes sir.

Q. And also the terms and conditions upon which you bought the paper?

A. Yes sir.

Q. First I will ask you, before you do that, whether you have those contracts in your files?

A. No sir.

Q. Do you know where they are?

A. I have destroyed them.

Q. How long ago did you destroy them?

A. About three months ago.

Q. That was before they were called for or before you were called upon as a witness in this case?

A. Yes sir.

Mr. FLANDERS: Objected to as leading and putting the answer in the witness' mouth.

Q. Now, Mr. Coleman, you may go ahead and state the names of the parties whom you contracted with from 1896 down to 1900, and give the general terms of the contract with each party.

Objected to by defendants as irrelevant, incompetent, immaterial and not the best evidence.

109 A. The Park Falls Paper & Pulp Company, September 1896 to January 1, 1897, \$1.80 per 100 pounds, 3 per cent. discount.

Q. For cash?

A. For cash.

Q. 30 days?

A. 30 days. Allowance for white waste paper per 100 pounds, \$1.40. The price per 100 pounds F. O. B. mills. The Park Falls Paper & Pulp Company, January 1, 1897, to January 1, 1898, \$1.75, per 100 pounds; 3 per cent. discount for cash; \$1.75 allowed for white waste paper per 100 pounds, F. O. B. mill.

Q. Does the "F. O. B. mill" mean the allowance for white waste paper?

A. No. I should say the price per 100 pounds \$1.75, F. O. B. mill. The Wisconsin River Paper & Pulp Company, January 1, 1898, to July 1, 1898, \$1.75 per 100 pounds, 3 per cent. discount for cash, \$1.75 for white waste paper per 100 pounds, price per 100 pounds F. O. B. Milwaukee.

Q. You mean the price under the contract for the paper?

A. The price under the contract, yes sir. George A. Whiting, July 1, 1898, to January 1, 1899, \$1.75 per 100 pounds, 3 per cent. discount for cash; \$1.75 for white waste paper per 100 pounds; contract price paper F. O. B. Milwaukee. The Flambeau Paper Company, January 1, 1899, to April 1, 1900, \$1.72 per 100 pounds, 3 per cent. discount for cash; \$1.60 for white waste paper per 100 pounds, contract price sidewalk delivery.

Q. What does that mean?

A. That means plus the cartage.

110 Q. Delivered where?

A. Delivered at the sidewalk of our building.

Q. You have got down to 1900 now?

A. Yes sir.

Q. That is as far as my question went. You have given the Wisconsin River Paper and Pulp Company and George A. Whiting; were they not the same company?

A. Yes sir. What I mean is this: that Mr. Whiting was interested, as I understood, in the Wisconsin River Paper and Pulp Company, but I am not certain as to that.

Q. Does your contract read with Mr. Whiting or with the Wisconsin River Paper and Pulp Company?

A. With the Wisconsin River Paper and Pulp Company.

Q. Both times?

A. No sir. Once with the Wisconsin River Paper and Pulp Company and once with Mr. George A. Whiting.

Q. Did you have more than one contract with the Flambeau Paper Company?

A. No sir; one.

Q. And that expired April, 1900?

A. April 1900.

Q. With whom did you next make a contract for the purchase of news print paper?

A. With the Manufacturers Paper Company.

Q. When?

A. The contract was dated July 1, 1900.

Q. And ran how long?

A. To January 1, 1901.

Q. State the conditions under which that contract was made with reference to the existence or non-existence of competition.

Same objection by defendants, irrelevant, immaterial, and calling for the opinion of the witness.

111 A. There was absolutely no competition.

Mr. FLANDERS: I move to strike the answer out for the same reasons.

Q. Did you endeavor to get competing bids?

A. I did.

Q. Where? State what the endeavors were.

A. I endeavored to ascertain from what mills I could obtain a bid.

Mr. FLANDERS: I move to strike the answer out as irrelevant and immaterial.

Q. Where did you go for information?

Objected to as irrelevant and immaterial.

A. I consulted what I considered the best or at least one of the best authorities in the United States on that subject—Mr. Victor F. Lawson.

Mr. FLANDERS: I move to strike that out for the same reason.

Q. Who is Mr. Lawson?

A. He is the proprietor of the Chicago Daily News, and also interested in the Chicago Record Herald.

Q. Did you consult anybody else? Did you consult any other source of information on the subject?

Same objection by defendants.

A. I do not at this moment recollect whether it was at this time or subsequently that I consulted Mr. Don Seitz, the publisher of the New York World.

Q. Did you consult any paper brokers?

Objected to as irrelevant, immaterial and leading.

A. I did.

112 Q. Who?

A. Mr. Edward Bouer for one.

Q. E. A. Bouer, of Milwaukee?

A. Yes sir. And I may say a Mr. (I have forgotten his initials) Hertz, of Chicago.

Q. Who is Mr. Hertz?

A. He is a broker.

Q. Paper broker?

A. Yes sir.

Q. Were you able to secure from these sources any information which enabled you to secure bids for your contract outside of the bid of the Manufacturers Paper Company?

Objected to by defendants as irrelevant, immaterial, leading and calling for the opinion of the witness.

A. The only information that I was able to secure was that there was absolutely no competition.

Q. Did the General Paper Company make any bid for your contract?

A. No sir.

Q. Has the General Paper Company ever bid for your contract?

A. Not to my recollection.

Q. With whom has your contract for the supply of news print paper been made since July, 1900?

A. With the Manufacturers Paper Company.

Q. Altogether with that company?

A. Yes sir.

Q. You have given the first contract with that company, I believe, but you have not stated the terms and conditions. Will you do that now?

Same objection by defendants, irrelevant, immaterial and on the ground that the contract is the best evidence.

Mr. OLDS: In view of that objection I will withdraw the question.

113 Q. Have you the contract that you were speaking of, or is that one of those that were destroyed?

A. That is one of those that I have destroyed.

Q. Have you any of the contracts made with the Manufacturer-Paper Company?

A. The last one must be on file.

Q. Go ahead and state the prices and terms of this contract made between you and the Manufacturers Paper Company, in July 1900.

Mr. FLANDERS: Objection renewed as hereinbefore stated.

A. Manufacturers Paper Company, July 1900 to January 1, 1901, price per 100 pounds \$2.35, 3 per cent. discount for cash; 75 cents for white waste paper per 100 pounds; the contract price sidewalk delivery.

Q. At the expiration of that contract did you make another contract with the Manufacturers Paper Company?

A. Yes sir.

Q. How long did that run ?

A. From January 1, 1901, to July 1, 1901.

Q. What was the price ?

A. \$2.20 per 100 pounds, 3 per cent. discount for cash ; 75 cents per 100 pounds white waste paper, sidewalk delivery.

Q. Did you get any bids from other parties at the time that contract was made ?

A. No sir. I beg your pardon, I don't believe I understood the question. Did you mean to ask me whether I endeavored to secure—

Q. No, I asked you whether you did get any.

A. No sir.

Q. Did you make any attempt to do so ?

A. Yes sir.

114 Q. Other than you have stated already ?

A. Yes, I was in communication with the other publishers of Milwaukee, and also with Mr. Glogauer *proposition* of the Evening Post of Chicago, and with Walter Michaelis, publisher of the *Frei Presse* of Chicago.

Q. At the expiration of that contract did you make another contract with the Manufacturers Paper Company ?

A. Yes sir.

Q. How long was that to run ?

A. From July 1, 1901, to July 1, 1902.

Q. Stat- the terms.

A. Price \$2 per 100 pounds, 3 per cent. discount for cash, 75 cents per 100 pounds for white waste.

Q. How were deliveries made under that contract ?

A. We were allowed the cartage.

Q. Delivered at your sidewalk, as before ?

A. Yes sir.

Q. Just go right ahead and give the remaining contracts with the Manufacturers Paper Company, in the same way, Mr. Coleman.

Objected to by defendants as irrelevant, immaterial; and on the ground that the contract is the best evidence.

A. July 1, 1902, to July 1, 1903, \$2.20 per 100 pounds, 3 per cent. discount for cash, 75 cents per 100 pounds white waste, f. o. b. Milwaukee. July 1, 1903, to July 1, 1904, \$2.25 per 100 pounds, no discount for cash, payments monthly ; 75 cents for white waste paper per 100 pounds, f. o. b. Milwaukee. July 1, 1904, to July 1, 1905, \$2.25 per 100 pounds, no discount for cash, payments monthly
115 for previous month's shipment ; 75 cents per 100 pounds for white waste, f. o. b. Milwaukee.

Q. F. o. b. Milwaukee, just what does that mean with regard to the cartage ?

A. That means that we pay two cents a hundred pounds cartage to deliver it from the railroad tracks to our sidewalk.

Q. Were you able to secure bids for your contracts at any of the

times you have spoken of when you made contracts with the Manufacturers Paper Company, from July 1900, down to the last contract you have mentioned?

Objected to as irrelevant, incompetent, immaterial, leading and calling for the opinion of the witness.

A. Yes sir.

Q. What bids did you secure?

A. We endeavored to make a contract or secure a bid from the Menasha Paper Company of Menasha.

Mr. FLANDERS: I move to strike that out as not responsive to the question.

Q. When was that?

A. In 1902.

Q. Did you get a bid from that concern?

A. Yes sir.

Q. Did you make a contract with them?

A. No sir.

Q. Why not?

A. I think that I have the correspondence regarding that effort on my part to make a contract, and I would hardly want at this moment, without referring to it (it is three years since I looked at it) to give the exact negotiations.

116 Q. Well, can't you give the result of the negotiations, Mr. Coleman? That is all I want.

Objected to by defendants as irrelevant, incompetent, immaterial and calling for the opinion of the witness.

A. The results were that I was obliged to make a contract with the Manufacturers Paper Company.

Q. Was the Menasha Paper Company at that time, at the time you were negotiating with them, a member of the General Paper Company?

A. I understand not.

Q. Do you know whether they afterwards joined?

A. Yes sir.

Mr. FLANDERS: Well, don't be quite so prompt, Mr. Coleman. Leave an opportunity for me to object.

WITNESS: I would be glad to do that.

Mr. FLANDERS: That is objected to as irrelevant and immaterial.

Q. Where did you get the information?

Objected to for the same reasons.

A. I don't believe that I can positively state just where.

Q. Was it communicated to you in any way by the Menasha Paper Company?

Objected to by defendants for the same reasons, and as leading and hearsay.

A. I am not able to answer that question.

Q. What person did you negotiate with when you made these contracts with the Manufacturers Paper Company?

A. With Mr. Brocklebank, vice-president.

117 Q. Did you ever try to get a better price or better terms from the Manufacturers Paper Company.

Objected to as irrelevant, immaterial and leading.

A. Yes sir.

Q. What did you do in that connection?

Objected to as irrelevant and immaterial.

A. Well, I got down on my knees, I guess.

Mr. FLANDERS: Literally?

WITNESS: Well, just about.

Q. Go ahead and state just exactly what you did, Mr. Coleman? —not in metaphorical terms.

Mr. FLANDERS: Make it literal.

A. During the time we have been with the Manufacturers Paper Company I have repeatedly endeavored to impress upon the company that fact that the Herald was a German publication, that our sources of revenue were not as large for the same work performed that the English newspapers enjoyed; that our rates of advertising were practically one half, and that we should be treated fairly by the trust; that it was not a question of whether we wanted to pay the same price that the English papers were paying or not; that it was a matter that I could demonstrate that our income could not be as large for the same work performed. But all my efforts in every direction were absolutely futile.

Q. What I asked for more particularly, Mr. Coleman, did you make any specific attempt at all to get any reduction in your
118 terms or conditions in your contract?

A. I did.

Mr. FLANDERS: I move to strike the former answer of the witness out as irrelevant and immaterial.

Q. Where did the paper which was supplied you under these contracts with the Manufacturers Paper Company, from July, 1900, down to date, come from?

Objected to as irrelevant and immaterial.

A. Partly from the Combined Locks and partly from the Tomahawk mills.

Q. Where is the Combined Locks mills located, do you know?

A. I am sorry to say I do not.

Q. In Wisconsin?

A. In Wisconsin.

Q. And the Tomahawk mills is located where?

A. At Tomahawk.

Q. Wisconsin?

A. Yes sir. I may say that I really was not interested where the mills were located; in fact the less I knew about them the better I was off, I thought.

Q. What was this attempt that you made to get a reduction?

Objected to as irrelevant and immaterial.

A. I asked Mr. Brokelbank, the vice-president, to arrange for a meeting between the president of the Tomahawk mill, Mr. Pride, and myself.

Q. Did he do it?

A. He did.

Q. Did you meet Mr. Pride?

A. Yes sir.

Q. Where?

A. In Chicago.

Q. Can you locate anywhere near the time?

A. I think it was sometime in June (the latter part, I should think) 1903.

119 Q. What took place?

Objected to by defendant as irrelevant and immaterial.

Q. That is, on that subject.

A. Mr. Brockelbank informed me that Mr. Pride would be in Chicago and that he had arranged for a meeting at 11 o'clock. I had a previous engagement and was unavoidably detained; and when I reached Mr. Brockelbank's office I was informed that Mr. Pride and he (Mr. Brockelbank) were at the Grand Pacific hotel, at lunch. At their request I went there and opened up the subject of our coming contract with the Manufacturers Paper Company. Mr. Pride listened to what I had to say, and it was about the same conversation I had with Mr. Brockelbank on the subject, and he positively refused to reply to anything that I said. I can scarcely remember that he said a word during the time that I spent there at lunch with them.

Mr. FLANDERS: Perhaps he was deaf and dumb.

Mr. OLDS: He was.

Q. Was that the end of your negotiations with Mr. Pride?

A. No, sir. He suddenly told me that he had an appointment for half past 2, if I remember correctly somewhere on the South Side, and he and Mr. Brockelbank left me, saying that they would meet me at 3 o'clock at Mr. Brockelbank's office. I was at Mr. Brockelbank's office promptly at 3 o'clock and found Mr. Brockelbank there. Mr. Pride, however, was absent.

Q. Did he come later?

A. He did not.

Q. Was that the end of your negotiations with Mr. Pride
120 on the subject?

A. Yes, sir.

Q. Did you ever hear anything further from Mr. Pride on the subject?

A. No, sir; excepting that Mr. Brockelbank said that he thought he was so ashamed of himself that he would not let me hear from him.

Q. Have you ever tried to get your paper through any other broker than Mr. Brockelbank?

A. Yes, sir.

Q. Through whom?

A. Through Mr. Bouer—E. A. Bouer.

Q. What did you do in that connection?

Objected to by defendants as irrelevant and immaterial.

A. I said to Mr. Bouer one day that inasmuch as I had to pay a price that was decided upon for me, that I would prefer to have the commission spent in Milwaukee instead of in Chicago, and requested him to go down to Chicago and buy my paper at the identical price that it was offered to me by the Manufacturers Paper Company.

Mr. FLANDERS: I move to strike that out as irrelevant and immaterial.

Q. Did Mr. Bouer do that, do you know?

A. He did.

Q. Did he get the paper?

A. He did not.

Q. Do you know why?

Objected to as irrelevant and immaterial.

A. Yes, sir.

Q. Do you know where he applied to get it?

Same objection, and as hearsay.

A. Yes sir.

121 Q. Where?

A. At the office of the General Paper Company.

Q. Why didn't he get it, if you know?

Same objection by defendant.

A. Because they charged him 5 cents a hundred pounds more than the paper was offered us through Mr. Brockelbank. And I may say that Mr. Bouer said to me that they laughed when he came into the office, saying that they knew that he was after the contract for the Herald paper.

Mr. FLANDERS: That is important, if true, and I move to strike it out for that reason, and as irrelevant.

Cross-examination.

By Mr. FLANDERS:

Q. Mr. Coleman, you said that in your futile appeal to Mr. Brockelbank, you impressed upon him the fact that the Herald was a German publication.

A. Yes sir.

Q. You have been doing that pretty generally throughout the past 20 years, not only to Mr. Brockelbank, but to the community generally, haven't you?

A. I didn't understand your question.

Q. Well, that didn't make any impression on Mr. Brockelbank that it was a German publication?

A. Not as far as the price went, no.

Q. Well, did it make any impression on him otherwise, as far as you could see?

A. Yes, I think he was visibly affected.

Q. Showed emotion?

A. Yes, he showed a great deal of concern.

122 Q. Was it concern or emotion that he showed?

A. No, concern for my personal welfare, I should judge.

Q. Oh! But the concern for your personal welfare was not sufficient to make him shade the price to a German publication?

A. The reason why this was so, is because he said that he had absolutely no power to change that price one iota.

Q. No, but if he had had the power, he would have taken into consideration the fact that it was a German publication.

A. He didn't say so.

Q. But you inferred that?

A. I wouldn't swear to that, no.

Q. You also appealed to the charitable side of his nature, on the ground that the advertisements in the Herald didn't pay more than half as much as they paid in the English papers?

A. I have never appealed to a living soul on the ground of charity, sir.

Q. Well, but you represented that fact to him? I will put it that way.

A. No, sir, I did not.

Q. Didn't you say a few minutes ago that you represented to him the fact that the prices received for advertisements in the Herald were not much more than half those received by the English papers?

A. That was a business proposition, not charity.

Q. Well, we will leave out the word "charity." You represented that to him, didn't you?

A. I did.

Q. As a reason why the price of paper should be made less to the Herald.

123 A. I will answer your question in this way: that I said to him that we were obliged to give a discount for cash to all of those with whom we did business, (I am now speaking of the advertising agencies) and that as far as I was informed every man engaged in business gave a discount for cash; that it was a practice so universal that only the fact that the output of paper was absolutely controlled warranted such an outrageous, cut-throat procedure.

Q. Well, have you got through now answering that? That is not the question I asked you. I didn't ask you what kind of a speech you made to Mr. Brockelbank, but I asked you whether you represented to him that the advertisements in the Herald were paid for at about half the rate of advertisements in English papers were.

A. Well, now, if you will kindly put your question again just as you want it answered I will give it my close attention.

Q. I put it once. Now give your close attention, and Mr. Taylor please read the question just as I put it, and if it is not comprehensible I will do my best to make it so.

The question was read by the examiner.

WITNESS: I asked him to take that fact into consideration, yes sir.

Q. As one of the reasons why the price should be less to the Herald—that the advertisements of the Herald were paid for at about half what they were paid for in the English papers?

124 A. I made that appeal—I will answer it to your satisfaction, if you will abide with me just a moment.

Q. It is a question which can be answered to my best satisfaction by yes or no. That is what it calls for.

A. Well, you will see at once it will be impossible for me to answer it yes or no. I don't recollect that I ever made that appeal before to anyone. It was only because the price was so arbitrarily based that I felt what I said to Mr. Brockelbank would be or could be taken into consideration.

Q. Well, now, you didn't hear me ask you what you had said to anybody before, did you?

A. No.

Q. Then you preferred to answer something that I didn't ask you to answering what I did ask you?

A. No, but I want to answer it—

Q. Now, I will ask you again, and put it plain and straight, and it may be answered yes or no, according to my judgment. Did you represent to Mr. Brockelbank that the fact that the advertisements in the Herald were paid for at about half what advertisements were paid for in the English papers was a reason why you should get from Brockelbank the paper at a lower price?

A. At that time.

Q. Well, I am talking of at that time.

A. Well, that is what I am talking of now.

Q. Well, now, that appeals to you, does it, as a good business proposition to Brockelbank?

A. Well, when a man has his hands on my throat and I am trying to get them off, almost anything will appeal to me.

Q. No, but to Brockelbank I am talking about.

125 A. I am talking about Brockelbank.

Q. You think that the fact that a man's income is small is a good reason for a man who is selling paper to sell it at a lower price to him, do you?

A. That is not what I said.

Q. A good business proposition?

A. I haven't maintained that, sir.

Q. Still you urged that as a reason,—that the income of the Herald was small, as a reason why he should shade the price of paper to you?

A. Well, I object to your using that expression "small" because I haven't said so.

Q. Well, then, I will put it in your own language. You used the reason that the advertisements in the Herald did not command more than half the price they commanded in the English papers as a reason why he should shade the price of paper to the Herald, didn't you?

A. At that time, yes sir.

Q. And that struck you as a good business proposition to Brockelbank?

A. I should think so, yes.

Q. It does now too, doesn't it?

A. It certainly does.

Q. Now, then, you carefully preserved all these contracts all these years, down to about three months ago, didn't you?

A. I did not.

Q. Didn't you say you destroyed them about three months ago?

A. Those that were left.

Q. Didn't you say you destroyed the contracts three months ago? Didn't you say that within thirty minutes here?

A. Such as I found, yes sir.

Q. Did you say anything about such as you found?

126 A. I don't know whether the question was asked me or not?

Q. Were you not asked where the contracts were, and didn't you say they were destroyed, and that they were destroyed about three months ago?

A. My answer is on record.

Q. Well, I am calling for your answer to this question? Can't you remember what you said thirty minutes ago?

A. I can.

Q. Well, did you so testify, or didn't you?

A. I testified that I destroyed the contracts?

Q. You didn't say anything about destroying those that were left or those that you found?

A. No, I think not.

Q. Well, now, which ones did you destroy three months ago?

A. (After referring to memorandum :) To the best of my recollection, the Flambeau Paper Company and the contracts with the Manufacturers Paper Company from July 1, 1900, on.

Q. That is, all the contracts with the Manufacturers Paper Company from July, 1900, on, except the pending one?

A. I can look over my files and will give you that answer this afternoon.

Q. Why can't you give it now? I am asking you for your recollection.

A. Because I do not know just what papers I destroyed at that time. There were a good many of them.

Q. Well, do you mean to say that some of them you have not destroyed, or that you are uncertain whether you have destroyed them or not?

A. Well, I will answer your question in this way, if it is satisfactory: I returned after an absence of seven months of illness, 127 on the 27th of March, and in cleaning up my desk I destroyed quite a number of papers that were obsolete, that were of no use, and I remember distinctly that amongst them were some of these contracts.

Q. Well, that is as far as you can go, then, on it?

A. As far at the present time.

Q. You don't know whether you destroyed all these contracts or not?

A. I know that I destroyed contracts, paper contracts.

Q. Well, now, I didn't ask you that question. You don't know whether you destroyed all these contracts or not, do you?

A. To the best of my recollection there is only one remaining, and that is of the Manufacturers Paper Company, July 1904 to July, 1905, on file at our office.

Q. Well, I don't care whether it is on file or where it is. I ask you now whether you know that you destroyed all of these contracts or whether you don't know it.

A. I do not.

Q. All you know about it is that you destroyed some contracts?

A. Yes sir.

Q. And for all you know about it, the bulk of the contracts may be down there now somewhere?

A. No sir, I know they are not,—the bulk.

Q. Well, a considerable number of them?

A. No sir.

Q. You say that you consulted Mr. Victor Lawson and Mr. Walter Michaelis as to whether there was competition in the paper trade or not.

A. Yes sir.

128 Q. As a business man do you consider that a good way to find out whether there is competition or not,—to go and ask Mr. Victor Lawson what he thinks about it?

A. I asked him as to his experience.

Q. No, I asked you whether as a business man you think that is a good way to find out whether there is competition no not,—to go and ask Victor Lawson what he thinks about it.

A. I certainly do.

Q. You do?

A. Yes sir.

Q. And the next best way is to ask Walter Michaelis what he thinks about it?

A. The next best way is to ask Mr. Bouer, which I did.

Q. Now, then, you did get a bid from the Menasha Paper Company, didn't you, in 1902?

A. Huh!

Q. Can't you answer that question?

(After some hesitation.)

A. Yes and no.

Q. Yes and no! Well, take the "yes" side of it, and what was the price you got?

A. The same price as the Manufacturers Paper Company.

Q. Take the "no" side of it; what price was it that you didn't get?

A. He left me in doubt as to the—if you will cross that out I will say that Mr. Balleau, the secretary of the Menasha Paper Company, made a very unfavorable impression upon me.

Q. Were you asked that question?

A. Now will you repeat the question, please?

Q. I am really not interested in your impressions of the 129 Balleau family.

A. If you were interested in my financial affairs in this matter you would appreciate how I feel about it.

Q. No, I am not interested in your financial affairs, either.

A. I am sorry for that, too.

Q. I've got enough to do to attend to my own. I am interested in finding out what price the Menasha Paper Company made you, if you will be good enough to listen to the question and answer it we will get along better.

A. It was \$2.20.

Q. You also say that he didn't make any price to you. What do you mean by that?

Mr. OLDS: I don't think he said that.

A. Because it was the same price that I got paper before from the Manufacturers Paper Company, and it was the only price.

Q. And when you said, in answer to my question as to whether

the Menasha Paper Company made a price to you, yes and no, you meant yes and not no; is that right?

A. If he had made it one cent lower than the trust price I would have considered it a bid.

Q. You don't consider a price is a price unless it varies from somebody else's price?

A. From the standpoint of the Menasha Paper Company it was a price.

Q. But from your point of view it was not a price unless it differed from somebody else's?

A. It was certainly not.

130 Q. Did the negotiations with the Menasha Paper Company extend over a considerable length of time?

A. I would prefer to look over the correspondence of that time.

Q. I am not interested in the correspondence; I am asking your recollection now.

A. It was simply a question of one sample carload.

Q. Now, Mr. Coleman, I didn't ask you that question.

The question was read to the witness.

A. I think not, to the best of my recollection.

Q. What was Brocklebank's price to you at the beginning?

A. Of the first contract you speak?

Q. No, the beginning of these negotiations in 1902.

A. 1902?

Q. Yes.

A. \$2.20, sir.

Q. Didn't he at first ask you \$2.25?

A. Not to the best of my recollection.

Q. Didn't he first ask you \$2.25, and the Menasha Paper Company make an offer of \$2.20?

A. He did not.

Q. He did not what?

A. He did not make me an offer of \$2.25.

Q. What was his first offer?

A. To the best of my recollection it was \$2.20.

Q. Was there a difference between you and the Menasha Paper Company as to terms and times of payment?

A. To the best of my recollection they were identically the same as with the Manufacturers Paper Company.

Q. Where did you make that list from? (Referring to memorandum in possession of witness.)

131 A. Our cashier made that for me.

Q. When?

A. I think about two weeks ago, sir.

Q. What did he make it from?

A. From our books.

Q. What entries in your books would give the information contained there?

A. From the bills received from the mill.

Q. The bills are not your books?

A. They form a part of the books.

Q. Will you allow me to see that memorandum you have got.

A. Yes sir. (Handing memorandum to Mr. Flanders.)

Q. You have testified that you did not ask the General Paper Company to make any bids.

A. Yes sir.

Q. You asked Victor Lawson and Walter Michaelis as to the advisability of soliciting a bid from them?

A. And Mr. Bouer and Mr. Hertz.

Q. You were not willing to pay a commission to the General Paper Company; you wanted to pay it to Bouer, you said? You wanted the commission to be spent in Milwaukee?

A. Well, to be honest, I wanted to satisfy myself as to whether it was only a question of price in this whole proceeding, but I also wanted to find out whether it was not a question of source, and I accomplished that by asking Mr. Bouer to go down.

Q. Bouer represented other mills, didn't he?

A. I do not recollect just what mills he did represent, sir.

Q. Well, don't you know as a matter of fact that he represented a variety of mills? You can't have forgotten that, have you?

A. Well, not a variety of mills.

132 Q. Well, mills other than those in the General Paper Company?

A. No sir. To the best of my information he had represented the Great Northern Paper Company, but I had been informed that Mr. Bouer was making contracts with Milwaukee newspapers for the General Paper Company.

Q. Well, now, I didn't ask you that question, Mr. Coleman. I asked you whether he did not represent mills other than those represented by the General Paper Company, and you say that you were informed that he represented the Great Northern mill.

A. That he had—not that he did; that he had.

Q. Had done it when?

A. He did the first time I had conversation with him.

Q. Well, there is a contract in evidence here, offered in evidence yesterday, that was dated the 25th of January, 1902, executed by him, which showed that he contracted to deliver the product of the Great Northern mill at that time. You were dealing with him at that time, weren't you?

A. I think so, yes.

Q. And Hertz represented other mills, too, didn't he?

A. He represented one mill, if I remember correctly.

Q. Outside.

A. That is an eastern mill, but it belonged to the trust.

Q. Who did?

A. That is, I understood that he—

Q. Well, you understand a great many things, but who was it that belonged to the trust?

133 A. I say the mill that—I was given to understand that it was controlled—while it didn't form a part, yet it was controlled by the trust, that is, by the International Paper Company.

Q. What mill?

A. I think the Berlin Paper Company.

Q. Did Mr. Victor Lawson or Walter Michaelis give you to understand that?

A. He did not.

Q. Well, where did you get that information?

A. Oh, it was a matter of current report.

Q. You believe everything that is matter of current report, or that you hear?

A. Not quite.

Q. Or that is published in the newspapers?

A. Not quite.

Q. No, not all that.

A. Not always, no.

Q. According to your schedule here, the price of the Manufacturers Paper Company under your first contract was \$2.35, in July, 1900.

A. Yes sir.

Q. And in July, 1901, it got down to \$2?

A. Yes sir.

Q. That looked to you very much like an advancing price?

A. (Laughing.) I think not.

Q. You regarded this interview with Pride down there at the Grand Pacific hotel, where he would not say anything, as important, didn't you?

A. As an insult.

Q. Did you regard it as important?

A. No sir.

Q. You don't now?

A. No sir.

Q. Well, of course you didn't detail it simply for the purpose of showing that an insult was offered to you?

A. Well, it is humiliating to think about it.

134 Q. Do you think it has any bearing on the question of the alleged combination of these defendants?

A. Most certainly.

Q. You do?

A. Yes sir.

Q. It strikes you as important on that subject?

A. Yes sir, very.

Q. Did you at any time ever apply to the General Paper Company direct for a bid on your paper?

A. Yes, through Mr. Bouer.

Q. Now, can't you understand that question, Mr. Coleman?

A. Yes sir.

The question was read.

A. Well, if I send somebody to somebody that is applying direct, is it not?

Q. Well, not according to my understanding of it, no.

A. Well, it is according to mine.

Q. Well, then, I will put it in another phrase: Did you ever in person or by letter apply to the General Paper Company for a bid on your paper?

A. I wasn't foolish enough to do so.

Q. Do you think that is an answer to the question?

A. I do, most emphatically. I won't be made a fool of by a living soul if I can help it.

Q. Contracts for paper, like other commodities, are varied somewhat, I suppose, by the quantity ordered by a man or men, aren't they? In other words, a large order would be apt to get a better price than a small order?

A. Yes sir.

Q. Now, in 1903 and 1904, when you were applying for prices what was the amount that you asked to have supplied to you?

A. I haven't it in my mind—that is, I don't know.

Q. No, but approximately. Was it 100 tons a day, or 10 tons a day, or 1 ton a day, or half a ton a day, or a quarter of a ton a day?

A. I don't know.

Q. Well, you can give us some idea about it, can't you?

A. No sir, I can not.

Q. Can't tell whether it was 100 tons a day or a quarter of a ton a day?

A. I can't state the amount, no sir.

Q. I am not asking you to state the amount exactly.

A. I wouldn't want to approximate it, sir.

Q. Of course you can find out?

A. Yes sir.

Q. Find out what the amount of your consumption was in 1903 and 1904.

A. Yes sir.

Q. What was your conversation with Mr. Pride about? About the Herald being a German publication?

A. Not particularly.

Q. Well, generally?

A. No sir, not generally.

Q. Well, what was it about?

A. It was that I felt—if you will let me have that slip a minute I will tell you what it was about. (Mr. Flanders hands the memoran. to witness.) The trust was about to raise the price of our paper in four directions.

Q. How do you know what they were about to do if you never talked with them?

A. I had talked with Mr. Brockelbank about it.

Q. Oh, Mr. Brockelbank was in the trust, was he?

A. He was the man that was supplying my paper.

136 Q. Well, was he in the trust?

(No answer.)

Q. Or was he the trust?

A. He was the agent.

Q. He was the agent of the trust?

A. He was one of the agents.

Q. One of the agents of the trust, was he?

A. He was the man that got the commission.

Q. I didn't ask you anything about his commission. Great Scott! Suppose you listen to the question and answer it.

A. I am trying to follow your questions, but your questions—

Q. They are very easy to follow.

A. I am not dense at all but I find it a little difficult to get you.

Q. I didn't say you were dense. You can lead a horse to water, but you can't make him drink.

A. I am trying to get at it intelligently.

Q. I will put it this way: You said that the trust was about to raise the price of paper to be sold to you?

A. In four directions.

Q. In four directions. Now I ask you how you knew what the price was going to be, and you said that Brockelbank told you.

A. He certainly did.

Q. And I asked you if Brockelbank was the trust. Now was he or wasn't he?

A. I understood that he was the man who received a commission from the trust to sell me paper.

Q. You understood that he was a man who received a commission from the trust to sell you paper?

A. Yes sir.

137 Q. What trust?

A. The General Paper Company.

Q. You understood that?

A. I certainly did.

Q. Have you testified at all that you got paper from the General Paper Company?

A. I have not.

Q. As a matter of fact, you didn't, did you?

A. I did. I got my paper from mills that belonged to the General Paper Company.

Q. But I am not talking about what mills you got it from; you didn't buy a dollar's worth from the General Paper Company, did you? (Witness hesitates.)

Q. Can't you tell that, with that list of contracts before you?

A. My contract was with the Manufacturers Paper Company.

Q. You never had a contract with the General Paper Company?

A. No sir.

Q. For a dollar's worth of paper?

A. No sir, not directly.

Q. Quite sure about that?

A. I know positively.

Q. What made it take you so long to answer that question, then?

(No answer.) Why did you hesitate when I asked you whether you bought anything from the General Paper Company or not, when you knew you hadn't?

A. Well, I am trying to control myself and answer in a very civil, business-like way. But after a man has been robbed as I have, and then he is possibly asked to stultify himself besides, it is asking a little more than the average man wants to put up with.

Q. Now I will inform you to start with, I am not asking
138 you to stultify yourself at all, and if I did I couldn't make you do it. All I ask you to do is to listen to my questions and answer them. And I ask you now why, when you knew you hadn't bought a dollar's worth of the General Paper Company, you hesitated three or four minutes before you answered that plain question?

A. Because the money all went to the General Paper Company.

Q. How do you know it did?

A. Because Mr. Brockelbank told me so.

Q. Then you think that is a reason for your believing that? Do you?

A. I certainly believed it.

Q. You make a contract with the Manufacturers Paper Company, and you think the money that is paid on a contract of that kind goes to the General Paper Company?

A. Because I believe the Manufacturers Paper Company was a myth.

Q. You believe the Manufacturers Paper Company was a myth?

A. I believe so, yes, as far as I am concerned.

Q. Didn't you know the Manufacturers Paper Company was a corporation entirely distinct and maintaining an agency in the city of Chicago, of which Mr. Brockelbank was the head, and controlling the output of a large number of mills? Didn't you know that?

A. No sir, I did not.

Q. The main office being in New York?

A. No sir, I do not know that.

Q. Don't know that?

A. No sir, I do not.

139 Q. Never heard that?

A. I heard that they did have a mill; it was somewhere in the East. But I was given to understand that that mill was no longer under the control of the Manufacturers Paper Company, and I was told that all that the Manufacturers Paper Company was interested in was in the commissions, absolutely.

Q. You know as a matter of fact the Manufacturers Paper Company transacted a large business in the sales of paper, did you not?

A. I did not.

Q. Didn't know that?

A. No sir.

Q. Never heard that?

A. No sir, I have not.

Q. Well, you didn't take much pains to find out about who was selling paper, did you?

A. It didn't make much difference to me under the circumstances.

Q. Well, did you take much pains to find out who was selling paper?

A. Will you repeat the question once more?

Question read.

A. Do you mean in the United States?

Q. Well, in this field out here.

A. I certainly did.

Q. Well, you only solicited bids from Mr. Bouer, Mr. Hertz and Mr. Brockelbank?

A. Well, I will tell you why,—because the General Paper Company advertised the mills that it controlled in the trade papers. There was no use in me going off and asking for bids when the General Paper Company positively published the fact that they controlled all the mills.

140 Q. Yes. Now you answer something that I didn't ask you.

The question was read.

Q. Now is that true or isn't it true, and I move to strike the last answer out as not responsive to the question, and not a proper answer. Now have you any objection to answering that question?

A. No, I will answer it if you will give me time.

Q. Well, it doesn't take a great while to say yes or no to that.

A. Well, I have answered it yes or no once before.

Q. Do you decline to answer it?

A. Not at all.

Q. Well, answer it, please.

A. Well, it was not satisfactory before, so I will try to answer it now in a little different way.

Q. It may be answered yes or no, and I will respectfully ask you to answer it yes or no.

A. I will say I did not make any attempt to get paper from the General Paper Company.

Q. Now I didn't ask you that question.

The question was read.

A. No sir, I stated before that I solicited bids from the Sheboygan Paper Company.

Q. If you said that it has escaped my recollection.

A. I certainly have.

Q. I don't remember the name of the Sheboygan Paper Company being mentioned.

A. Oh, yes, I have.

Q. When was it that you solicited bids from the Sheboygan Paper Company?

A. On two separate occasions prior to this year.

140½ Q. Well, when was it?

A. The last time it was in June, 1903—or 1904, I beg your pardon, 1904.

Q. What was the time before?

A. I can not state it this moment, sir.

Q. Well, did you get prices from them?

A. I did.

Q. Was that the Michigan Sheboygan Company?

A. Yes sir.

Q. And what were those prices?

A. Exactly the same as the Manufacturers Paper Company.

Q. Well, they were not in the trust, were they? They didn't belong to Brockelbank? Did they, or didn't they?

A. They were a so-called independent mill.

Q. A so-called independent mill?

A. Yes sir.

Q. The price was the same: how did you find that out?

A. By their telling me.

Q. By their telling you?

A. Yes sir,

Q. But their price was the same as the Manufacturers Paper Company?

A. I telegraphed—

Q. Oh, I didn't ask you about telegraphing.

A. —to allow me—

Q. I didn't ask you what you telegraphed.

A. Now you want to know so much, and I will give it to you.

Q. There is so much you know that I don't care a rap for.

A. If you could only come into my office and look over my affairs with me you would be awfully anxious to tell what you know.

Q. Well, the next vacation I will come there.

A. All right.

141 Q. But just at present I am trying this law suit and I don't care a thing about what you telegraphed.

The following question was read: But their price was the same as the Manufacturers Paper Company?

A. Identically.

Q. You have said you got paper before 1900 at \$1.75, didn't you?

A. Yes sir.

Q. And from April, 1900, to July 1900, you paid \$2.62, didn't you?

A. Those were for sample cars.

Q. Now, Mr. Coleman, why in the world can't you answer my question?

A. I say yes sir.

Q. And \$2.35. Two different purchases?

A. Yes sir.

Q. Made in the open market?

A. No sir.

Q. Why not? There wasn't any wicked trust then, in April, was there?

A. It was forming.

Q. How do you know it was forming? Did Brockelbank tell you that, or Victor Lawson, or Walter Michaelis?

A. No sir, but it was in the air.

Q. Oh, it was in the air?

A. Yes sir.

Q. Where—up in the Herald building?

A. In all the offices, sir.

Q. All the offices?

A. Yes sir.

Q. Everything that is in the air you believe, do you?

A. Not at all, sir,—not at all.

Q. You think there wasn't any open market then? You think that this wicked trust being in the air controlled the market do you?

142 A. I think that negotiations were progressing.

Q. Oh, I have no doubt you think so, but that is not the question I asked you. Now read the question to him, Mr. Examiner, and be good enough to pay close attention to it.

A. I am. I don't want to detain you, because I have an appointment and I want to get away as soon as I can.

Q. Then be good enough to listen to the question and answer it.

The question was read, as follows: You think that this wicked trust being in the air controlled the market, do you?

Mr. FLANDERS: In April, 1900.

A. I think that negotiations being in progress that the market price of paper was influenced by these negotiations, yes sir.

Q. You don't know how much the product of all these mills that went into the General Paper Company was or is, do you?

A. I do not.

Q. Do you know what the total product of print paper was or is?

A. I do not.

Q. Well, then, you paid in April, 1900, more for paper than you have ever paid since, didn't you?

A. Yes.

Q. What?

A. Yes.

Q. And more than you have ever known print paper to be since, isn't it?

A. Yes sir.

Q. And there has been a steady decline from 1900 to 1902? Wasn't there?

A. Well, there was a drop from April 1900 to July 1900.

143 Q. Oh! Now was that the question I asked you? Now be good enough to read it to him, Mr. Examiner.

A. I am very unfortunate, certainly.

Q. Well, perhaps I am unfortunate in not making my questions clear. (Question read.) Now bear in mind that I don't ask you anything about a drop from April to July, 1900, but from July, 1900, to July, 1902. Has there or has there not been a steady drop? (Witness hesitates.)

Q. That doesn't require very much mental arithmetic, does it?

A. Well, it depends on what you mean by the word "steady."

Q. Well, I will take any meaning you give to it; any meaning you have will satisfy me completely.

A. When I answer the question in my way, then you object.

Q. I will take any meaning that you give to the word "steady"—even if it should be unsteady. Now with that liberty can't you answer that question conveniently?

A. (After looking at memorandum.) Well, how can I answer that question when you know there has been a drop and a rise?

Q. Well, lots of things I don't know that you know.

A. I know, but you can read as well as I.

Q. Well, I certainly can.

A. There is a rise there. How can I say that there is a steady drop when you know that there is a rise there?

Q. Now be good enough to answer that question.

A. I don't think you are putting a question to me that is right.

144 Q. If it is not fair we will change it.

A. Well, it is not fair.

Q. Listen to the question.

A. You asked me whether I can't look and whether I can't see, and you can see for yourself that there is a rise there.

Q. I am the most liberal man in the world there. I will take your statement as to whether this question is fair.

A. You might just as well ask me whether that hat there has a black band or a white band.

Q. Well suppose you listen to the question. I will state the question. The dates, Mr. Coleman, were from 1900 to 1902. Now bear that in mind. Is there anything unfair about that question.

A. Yes sir, because you say to 1902, and here, July, 1902, there was a rise of 20 cents. Now how can there be a steady decline?

Q. I said from 1900 to 1902.

A. Well, that is what I am saying. You ask me to say something that you know I can't answer.

- Q. From 1900 to 1902 a drop from \$2.25 to \$2, wasn't there ?
A. Yes, and it went up to \$2.20.
Q. I am not talking about what it did afterwards.
A. You said to me to 1902.
Q. Didn't your contract run into 1902 ?
A. Wasn't there a rise there ?
Q. No, but your previous contract ran from 1901 to 1902, didn't it ?
A. Oh ! Well, that is a different thing. Up to July, 1902, there was a steady decline.
- 145 Q. Now, we have got it after a while ?
A. Well !
Q. Now, before 1900, from 1893 on, there was a marked depression in business, wasn't there ?
A. Yes sir.
Q. And along in '94, '5, '6, '7 and '8, and really into '99, it was as bad or worse than it was in 1893, after the effects of the panic had been more marked.
A. Well, there was a gradual improvement.
Q. When did the improvement begin ?
A. About '96 I should judge.
Q. When our friend Mr. Bryan was on the carpet ?
A. No, but things were pretty lively.
Q. Oh, they were lively enough. Do you think business was good in about 1896—prices good ?
A. No, they were unsteady.
Q. Pretty low, weren't they ?
A. No, I think not.
Q. Prices generally. Isn't it the fact, Mr. Coleman, that about the lowest prices we had in the past decade was along in 1895, '6 and '7 ?
A. Yes, I think that that would be right.
Q. Yes, of course it was.
A. I think so.
Q. And really there wasn't any marked improvement in prices until the end of 1899 or the first part of 1900, was there ?
A. Yes, I think you are right.
Q. Now, 1900 was a prosperous year, wasn't it,—supposed to be, generally,—the era of prosperity ?
A. Have you now asked me as to my own business or in general ?
- 146 Q. No, not as to your business at all ?
A. In general I think it was very good.
Q. And then the progression was quite steady for two or three years, wasn't it,—advancing, advancing prices, and a liberal demand,—generally, I mean ?
A. Yes, I think the times were considered good.
Q. And pretty much everything advanced in price, didn't it ?
A. Yes, I think there was an upward tendency.

Q. In labor ?

A. Yes sir.

Q. As well as in other things ?

A. I think so, yes.

Q. The labor that you employed, there was a decided advance, wasn't there ?

A. I won't say a decided advance, but there was an advance.

Q. Well, you don't mean to say an undecided advance, do you ?

A. Well, by decided I mean something that would be—that I might construe as unreasonable.

Q. I am not talking about its being unreasonable, but how much of an advance was there in the price of labor, in your business for example ?

A. Well, very little, sir.

Q. Well, I didn't say that ; I am not speaking of the Herald particularly, but in that line of business. I am not asking you for any secrets of your business. Wasn't there an increase of 10, 15 or 20 per cent. in the price of labor ?

A. No, sir, not in our business.

Q. Well, how much ?

A. Oh, I think possibly an increase of—I think 5 per cent. in our business would be about right.

Q. In the Herald business ?

A. I think so, yes.

147 Q. Do you take into consideration in that estimate the fact that the hours were shorter ?

A. No sir, because our hours were shortened to eight hours in 1886.

Q. 1886 ?

A. Yes sir. 1886. We were the first newspaper to introduce the eight-hour law in that year.

Redirect examination.

By Mr. OLDS :

Q. Aside from this last contract with the Manufacturers Paper Company, have you been able to find any of these other contracts that you have spoken of ?

A. I haven't looked for them, sir.

Q. Can you look for them and let us know this afternoon what ones you have ?

A. Yes sir.

Q. What ones you can find.

A. Yes sir.

Recross-examination.

By Mr. FLANDERS.

Q. You have lately closed a contract, haven't you ?

A. Yes sir.

Q. With whom?

A. With the Sheboygan Paper Company.

Q. When did you close that?

A. Last Thursday, sir.

Q. And with whom did you close that?

A. With Mr. Frambach, the president of the Cheboygan Paper Company.

Q. The so-called independent mill?

A. The so-called independent mill, yes.

Q. And at what price?

A. At \$2.06, less 3 per cent. for cash.

Q. And it is still a so-called independent mill.

A. I call it so.

148 Q. Well, there isn't any doubt about it, is there, in your mind?

A. If you will let me answer the question, and you can strike it out if it doesn't suit you——

Q. No, but that is a question that can be answered by yes or no.

A. Will you repeat the question?

Question read.

Q. There isn't any doubt about it in your mind, is there? You can answer that yes or no. Either answer will suit me.

A. I am not certain at this moment whether that mill is practically an independent mill or not, sir.

Mr. FLANDERS: Well, that answers the question.

Subscribed and sworn to before me this — day of —, 1905.

Special Examiner.

149 GEORGE BRUMDER, sworn as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. OLDS:

Q. What is your business, Mr. Brumder?

A. Publisher of the Germania.

Q. The Germania is a daily paper?

A. Daily and weekly paper.

Q. Published in the German language?

A. Published in the German language.

Q. Do you publish more than one paper?

A. Yes sir.

Q. What others?

A. Deutsche Warte, Rundschau, and Haus Bauernfreund.

Q. Those papers are all located here in Milwaukee, are they?

A. They are all located in Milwaukee.

Q. Do you publish any paper elsewhere?

A. Yes sir.

Q. What?

A. The Frei Presse, at Lincoln, Nebraska.

Q. Is that also a German paper?

A. A German paper.

Q. Daily paper?

A. A weekly.

Q. Is the Germania Publishing Company the company that controls all of these papers?

A. All excepting the Frei Presse.

Q. All the others are published here in Milwaukee?

A. Yes.

Q. Except the paper published in Lincoln, Neb.?

A. Yes. The Deutsche Warte is published in Chicago, but printed here.

Q. The Lincoln paper is printed in Lincoln, Neb.?

A. Yes.

150 Q. Do you personally have charge of the buying of the news print paper of these various publications?

A. Yes sir.

Q. How long have you looked after that part of it yourself?

A. Oh, the last 20 years almost.

Q. About how much news print paper do you buy annually, Mr. Brumder?

A. The last contract I made was for 6,500 tons.

Q. About how much were you buying along in 1900, say?

A. This 6,500 tons was supply for two years.

Q. That would be 3,250 tons per year?

A. Yes.

Q. Were you using approximately that amount in 1900?

A. Not quite.

Q. Not quite that amount. Prior to 1900 where did you purchase your news print paper?

A. Most all the time from Kimberly and Clark Company.

Q. During that period prior to 1900 state what the conditions were in the purchase of news print paper for your contract with reference to the existence or non-existence of competition?

Objected to by defendants as irrelevant, incompetent, immaterial and calling for the opinion of the witness.

A. In those years I generally placed a contract for one year, from year to year, and the agents of the different mills came around asking when our contract ran out and whether they couldn't get a chance to put in their bids.

Q. Can you give the names of the mills that you refer to?

A. Well, I don't recollect any more who came, but there
151 was Davis from the Winnebago paper mill, Mr. Frambach
from the Sheboygan Paper Company, and several others; I
don't recollect their names.

Q. Any of the Wisconsin mills?

A. Yes. Generally we had bids from a great many different
mills.

Q. And about how did the prices run during this period before
1900, generally? How did they range?

Objected to by defendants as irrelevant and immaterial.

A. They varied a good deal. In 1897 was the lowest price.

Q. What was that?

A. (Referring to memorandum.) That was \$1.42½, less 3.

Q. And what was it in 1899?

A. In 1899, \$1.50 less 3.

Q. \$1.50 less 3?

A. That was from May, 1898, to May 1899.

Q. Did you have another contract from May, 1899, to May, 1900?

A. Yes sir.

Q. With whom?

A. With the Kimberly and Clark Company.

Q. What was the price on that contract?

A. \$1.60, less 3.

Q. Have you your back contracts?

A. No sir, I am sorry I have not. I have only two years, 1904
and 1905.

Q. You have those two?

A. Yes.

Q. What became of the others?

A. I didn't want the papers and I destroyed them.

Q. You have destroyed your back papers, have you?

A. Yes, a great many old papers.

Q. Did all of the contracts that you had prior to 1900 pro-
151½ vide for a discount for cash payment?

A. Prior to 1900?

Q. Yes, prior to 1900.

A. Yes sir.

Q. You said the price was \$1.50 less 3, and \$1.42 less 3. You
mean by that less 3 per cent. discount for cash?

A. Less 3 per cent. discount for cash.

Q. After the General Paper Company was organized, in 1900,
state what the condition was then with reference to competition or
lack of competition for your contract.

Objected to by defendants as irrelevant, incompetent, immaterial,
leading, and calling for the opinion of the witness.

A. Well, in 1901, I couldn't get any bids at all from other parties.

Q. How about these other years since then—1902, could you get any bids?

A. Yes sir.

Q. Whom did you get bids from then?

A. From the Great Northern Paper Company, through Mr. Bouer.

Q. And in 1903 did you get any bids otherwise than through the General Paper Company?

A. I did.

Q. Whom did you then get to bid on the contract?

A. I can't recollect, exactly.

Q. Did these agents of the mills who used to come around prior to 1900, as you have testified, keep coming around after 1900?

A. No sir, not in 1901.

Q. Did those agents come around in 1902?

A. Yes sir, there were several of them in my office.

152 Q. Who were they, do you know?

A. Well, I don't recollect any more.

Q. Any agents of these Wisconsin mills who were in the General Paper Company?

A. No sir.

Q. None of those. Were they agents of eastern concerns?

A. Chicago concerns.

Q. What price did you pay for paper in the contract you made in 1900?

A. That is 1900 and 1901?

Q. Yes.

A. \$2.30, less 3.

Mr. FLANDERS: That is, from the 1st of May, 1900?

WITNESS: That is from the 1st of May, 1900.

Q. With whom was that contract made?

A. With the General Paper Company.

Q. It was made with the General Paper Company in May?

A. Yes sir; it might have been closed in April, or so, I don't recollect exactly, but it ran from May on.

Q. From May to May?

A. Yes.

Q. But are you sure you made the contract with the General Paper Company?

A. I did; I was down there personally.

A. Well, I am talking about 1900; 1900 to 1901. I think perhaps you are thinking of another contract.

A. 1900 to 1901, yes, sir, I made it with the Kimberly and Clark Company.

Q. With the Kimberly and Clark Company?

A. Yes sir.

Q. And where did the paper come from under that contract?

A. I don't recollect from what mill.

Q. Well, did it come from the Kimberly and Clark mills?

153 Q. And you remitted to the Kimberly and Clark Company?

A. Yes sir.

Q. During all the time, under that contract?

A. 1900 and 1901?

Q. Yes.

A. No. Just wait. I have got another memorandum here. I remitted to Kimberly and Clark Company until August.

Q. Until August, 1900?

A. Until August, 1900.

Q. And after that where did you remit?

A. And after that I remitted to the General Paper Company.

Q. Have all your contracts since that time been made with the General Paper Company?

A. Yes sir.

Q. Up to the present time?

A. Up to the present time.

Q. And including your last contract?

A. Yes sir.

Q. What was the price mentioned in your 1901 contract, the one that you made in 1901? That is, the first contract you made directly with the General Paper Company?

A. \$2.30.

Q. Any discount for cash there?

A. 3 per cent. discount.

MR. FLANDERS: That was in May, 1901, was it?

WITNESS: That was in May, 1901.

Q. And did you have any allowance for waste paper returned in that contract?

Objected to as irrelevant and immaterial.

A. 75 cents.

Q. 75 cents per 100 pounds?

A. Per 100 pounds.

154 Q. And how were deliveries made under that contract,—in Milwaukee, or at the mill, or how?

A. In Milwaukee.

Q. At your sidewalk or at the depot?

A. No sir, at the depot.

Q. Now coming to your 1902 contract, the one you made in May, 1902: what was the price in that contract?

A. \$2.05.

Q. That was with the General Paper Company also, was it?

A. That was with the General Paper Company, less 5 and 3.

Q. Less 5 and 3—what does that mean?

A. Less 5 per cent. and 3 per cent.

Q. \$2.05, less 5 per cent. and 3 per cent.?

A. Yes.

Q. That would be less 8 per cent., wouldn't it, really?

A. No.

Q. You take off first 5, and then you take off 3 per cent. of the balance?

A. Yes, take off 3 per cent. for cash.

Q. Now that contract was made in May, 1902, you say?

A. Made in May, 1902. It may have been closed a month or two before.

Q. And the Great Northern Paper Company, I think you said, was bidding at that time?

A. The Great Northern Paper Company was bidding at that time.

Q. Through Mr. Bouer?

A. Through Mr. Bouer.

Q. Do you remember what bid you got from the Great Northern that year?

A. No, I don't.

Q. What allowance did you get for waste paper that year?

A. Always 75 cents since.

Mr. FLANDERS: Is that 1902 you are talking about now?

155 Mr. OLDS: Yes, the 1902 contract.

Q. And the deliveries were the same as before, were they?

A. The same as before.

Q. Now, you made another contract with the General Paper Company in May, 1903, did you?

A. Yes sir.

Q. What was the price under that contract?

A. \$2.25 net.

Q. Did you get bids elsewhere that year?

A. No sir, not as I recollect.

Q. And the other terms that you have mentioned were the same in that contract as in the other?

A. Ever since.

Q. The waste paper was 75 cents per 100 pounds?

A. Yes sir.

Q. And delivered at the——

A. At the depot.

Q. No discount, though?

A. No sir.

Q. Now, in 1904, you made another contract with the General Paper Company?

A. Yes sir.

Q. Was that made in May, also?

A. Also in May.

Q. Have you that contract?

A. Yes sir.

Q. Will you produce it?

A. I will.

Q. That is the one you said you still had?

A. I have got two. (Witness produces paper.)

Q. Now, these previous contracts that you made with the General Paper Company in 1901 and 1902 and 1903 were made with whom representing the General Paper Company?

A. In 1903 I closed a contract with Mr. Stuart.

Q. In your office?

A. In my office. Came to an understanding, and he went back to Chicago and sent the copy up.

156 Q. He sent the copy of the contract up, did he?

A. Yes.

Q. Did you draw a memorandum up in your office?

A. Yes sir.

Q. Did Mr. Stuart sign it?

A. Yes.

Q. Have you got the memorandum?

A. No; I am sorry I haven't got it any more.

Q. And Mr. Stuart, you say, sent the contract up after he went to Chicago?

A. Yes.

Q. Was that contract approved by any mill, that is, the contract that you got?

Objected to by defendant as incompetent, irrelevant and immaterial; the contract is the best evidence.

A. No, it was a contract made direct with the General Paper Company,

Q. And was there any other party to the contract besides you and the General Paper Company?

A. No sir.

Q. How about the contract made in 1902, with whom did you make that?

A. I can't tell exactly; I don't know who was up here in 1902. Maybe Mr. Davis.

Q. You don't remember?

A. I don't remember.

Q. Well, somebody from the General Paper Company came to your office, did they?

A. Yes, an agent from the General Paper Company.

Q. And was a contract drawn up and signed in your office?

Objected to as irrelevant and immaterial.

A. Well, a memorandum was made, put on a memorandum, and then sent the contract up from Chicago.

157 Q. Made just like the other one, by a memorandum?

A. Yes.

Q. Was there anybody to that contract except you and the General Paper Company?

Same objection by defendants, irrelevant and incompetent, and the contract is the best evidence.

A. Only the General Paper Company.

Q. Was the contract you received approved or marked with the approval of any mill?

Same objection by defendants.

A. No sir, only the General Paper Company.

Q. Now the contract that was made in 1901, do you remember whom you made that contract with, what officer of the General Paper Company negotiated it?

A. If I remember right, I am under the impression it was Mr. Stuart also, but I couldn't swear to that.

Q. Did the negotiations take place in your office?

A. In 1901, you say?

Q. Yes.

A. No, in 1901 I had to go down to Chicago. Stuart didn't come up then.

Q. So you went down to Chicago to see him?

A. I had to go down to Chicago to see him. The positions had changed.

Q. Well, had you tried that year to get any bids elsewhere at all?

A. Yes, I tried it, but I couldn't get any bids in Wisconsin.

Q. Where did you try?

A. Well, I couldn't swear now.

Q. Did you try through any brokers?

Objected to by defendants as irrelevant and immaterial.

158 A. I can't remember.

Q. This contract that was made in Mr. Stuart's office, was that drawn right up there in your presence?

Same objection, and as leading.

A. No sir, not while I was there, because we had an understanding, and then it was sent up.

Q. He sent the contract up afterwards?

A. Yes.

Q. And was that contract marked or in any way endorsed with the approval of any other party than the General Paper Company?

Same objection.

A. No.

Q. It was not. In any of these talks that you had with the officers of the General Paper Company in negotiating your contracts, has anything been said about the approval of any mills?

Objected to by defendants as irrelevant, incompetent, immaterial and leading.

A. No sir.

Q. Did that apply to all of the contracts made with the General Paper Company?

Same objection.

A. That applies to all of the contracts, yes sir.

Q. Now, this paper marked Petitioner's Exhibit 146, as I understand it is the contract that you made in April, 1904?

A. Yes sir, that is the contract I made in 1904.

159 Q. And who came to see you when that contract was made on behalf of the General Paper Company?

A. Mr. Davis.

Q. Did he come to your office?

A. He came to my office.

Q. And where was the contract made out, at your office or—

A. Well, there is a memorandum of that contract.

Q. I mean the 1904 contract; where was the contract made out?

A. It was made out in the General Paper Company's office in Chicago.

Q. And did you draw a memorandum as in the other cases?

A. Yes sir, we had a memorandum.

Q. And that was signed and delivered at your office?

A. Yes.

Q. Did you agree upon the price at that conference?

A. Yes sir.

Q. And the terms of the contract?

A. Yes sir.

Q. Did you have any bids from outside sources at the time you made this 1904 contract?

A. Yes, I suppose I had one or two, but I couldn't get any better price.

Q. You couldn't get any better price?

A. Yes.

MR. FLANDERS: When was that?

WITNESS: In 1904.

Q. Who made bids, do you remember?

Witness refers to memorandum.

Q. This is in April, 1904?

A. Yes. In 1904 I had a bid from Mr. Frambach, I suppose, of the Sheboygan Paper Company.

Q. That is the mill over in Michigan?

A. Yes. The prices were alike, but I preferred the General Paper Company.

160 Q. What is that?

A. The prices were alike.

Q. And you closed with the General Paper Company?

A. I closed with the General Paper Company.

Q. All the other terms alike?

A. Everything.

Q. Just the same. Now, in April of this year, did you make another contract with the General Paper Company?

A. I did.

Q. Have you that contract?

A. I have.

Q. Will you produce it, please?

A. Yes sir.

Paper produced by witness marked Petitioner's Exhibit 147.

Q. Who came to Milwaukee to represent the General Paper Company in negotiating this 1905 contract?

A. Mr. Davis, the sales agent of the General Paper Company.

Q. Did he come to see you more than once?

A. Yes sir.

Q. How many times?

A. Twice.

Q. When did he come the first time, do you remember?

A. February.

Q. In February?

A. This year.

Q. Did you take up the subject with him at that time?

A. Well, I wasn't quite prepared for him. We were talking in a general way about paper prices.

Q. Did you talk about terms?

A. Yes, in a general way.

Q. Did he make any price to you at that time?

A. No sir, he didn't make a positive price and I didn't make a positive offer.

Q. Well, did he name a price at which he was willing to sell you paper?

A. No, not exactly.

161 Q. Didn't start in at any price at all?

A. Well, he tried to get or he said he ought to get about \$2.20, and so on, but I was under the impression when he left that I could get it at a lower price if I had made an offer.

Q. Lower than \$2.20. When did he come to see you the second time?

A. In March.

Q. At the time this contract was made?

A. Yes.

Q. And what took place at that interview?

Mr. FLANDERS: When was that?

Mr. OLDS: In March, 1905.

A. Well, he came to my office and we were talking then about the price.

Q. What was said?

A. I began this way: I said, "All right, Mr. Davis, you didn't fix a price the last time you were here, you didn't mention price, but I was under the impression that you would accept it at $2\frac{1}{2}$." I told him I was under that impression.

Mr. FLANDERS: What do you mean by $2\frac{1}{2}$?

WITNESS: $2\frac{1}{2}$, that is \$2.12 $\frac{1}{2}$.

Q. And what did Davis say to that?

A. Well, I told him before he could make any expression in this regard, "You can't get a contract at such a price, because I had a better offer."

Q. You told him you had a better offer?

A. Yes sir.

Q. Did you have a better offer?

A. Yes sir.

Q. From whom?

A. Well, I don't like to mention it.

162 Q. Well, I won't ask you then. Was it from any Wisconsin mill.

A. I don't suppose.

Q. You don't suppose it was. Was it through a broker?

A. I had bids from brokers and from different mills.

Q. Did you have any bid from any mill that is in the General Paper Company?

A. No, I don't suppose they belong to the General Paper Company.

Q. Well, then, you told Davis that he could not close with you at any such price as \$2.12 $\frac{1}{2}$ because you had a better bid?

A. Yes sir.

Q. What did he do then?

A. He said, "We have been friends so long I would not like to lose your contract." I said, "Make it right and I will stay with you."

Q. Did you name any price at which you would be willing—

A. Yes sir, I told him then.

Q. What did you tell him?

A. I told him if he wanted the contracts he would have to come down to 2 cents.

Q. What did he say to that?

A. He accepted it.

Q. Did you close with him at that figure?

A. I did.

Q. Did you draw up a memorandum to that effect?

A. Yes sir.

Q. Is this the memorandum written on the margin of this contract, Exhibit 146?

A. That is the memorandum Mr. Davis wrote himself.

Q. Was that drawn up at that interview and signed at the time?

A. Yes sir.

163 Q. Was the contract afterwards—

A. Sent up from Chicago a day or two afterwards.

Q. This contract Exhibit 147 is the contract that was drawn up pursuant to this memorandum on Exhibit 146?

A. Yes sir.

Q. I notice that the contract Exhibit 147 contains the price \$2.10 per 100 pounds; is that the actual price at which you were to buy the paper under the contract?

A. No sir.

Q. And attached to the contract I notice a letter from Mr. Davis, dated March 22, 1905, the same date as the contract? Was that attached at the time the contract was sent to you?

A. Yes sir, this was sent along with the contract.

Q. Sent just as it is?

A. I pinned them together.

Petitioner offered in evidence Petitioner's Exhibits 146 and 147.

Q. What talk did you have—

Mr. FLANDERS: What are these things that are pinned on?

Mr. OLDS: That is sample paper, I suppose. I don't suppose it is necessary to incorporate that in the record.

Mr. FLANDERS: No.

Q. What conversation, if any, did you have with Mr. Davis about this subject of rebating ten cents from the face of the contract?

A. Well, he made a price there of 2 cents, and when I got the contract from Chicago it was made out that way, with the letter.

Q. Made out that way. You didn't know when you got it that it was going to be put up in that form?

164 A. I don't suppose I did.

Cross-examination.

By Mr. FLANDERS:

Q. Mr. Brunder, as I remember, you said that the price in 1892 was the lowest of all?

A. Yes sir.

Q. That was \$1.42½?

A. Yes, that is when I bought.

Q. And 1898?

A. It was \$1.50. 1898 to 1899 it was \$1.50.

Q. And 1899 to 1900?

A. It was \$1.60.

Q. And 1900 to 1901 it was what?

A. \$2.30 less discount.

Q. Now take 1901 to 1902, what was it?

A. That was \$2.05.

Q. And 1902 to 1903?

A. Same price, \$2.05.

Q. And 1903 to 1904?

A. \$2.25 net.

Q. And 1904 to 1905?

A. \$2.25 net.

Q. And this new one is 2 cents?

A. Yes sir, 2 cents.

Q. That was made in March, 1905?

A. Made in March, 1905, from May this year to May next year.

Q. Now, Mr. Brumder, in all these years when you made contracts with the General Paper Company, the price they made to you was as good or better than any other price you could get?

A. It was about the same.

Q. Well, it was either the same price or better?

A. The last time, just on account of staying with the General Paper Company or with Kimberly and Clark, as we were old friends, I had a little better shade in price.

165 By MR. OLDS:

Q. I want to be sure about your contract price in 1901. Just what was that price?

A. 1901?

Q. The one that you made in 1901.

A. That was \$2.30, less 3 per cent.

Q. And the contract that was made in 1902?

A. 1901 to '02?

Q. Yes.

A. May 1900 to May 1901, \$2.30, less 3 per cent.

Q. Now May 1901 to 1902.

A. \$2.05, less 5 per cent. and 3 per cent.

Q. Then in 1902 to 1903 what was it?

A. The same price.

Q. \$2.05, less 5 and 3?

A. Less 5 and 3. I am sorry I haven't the contracts any more, because in January, 1902, until May 1903 the invoices show an advance of 5 cents. Now I don't know how that happened.

Q. The invoices show an advance of 5 cents?

A. An advance of 5 cents.

Q. From what time?

A. From January 1 until May 1.

Q. What year?

A. 1903.

Q. January to May, 1903, the invoices show an advance of 5 cents?

A. I have taken this memorandum merely from the invoices or monthly statements.

Q. Did that contract have sort of a sliding scale clause in there by which the manufacturer was to meet the market price?

A. I don't recollect.

Q. Did the invoices show an increase of 5 cents over the other price?

A. Yes.

166 By Mr. FLANDERS:

Q. In 1901 you say the price was 2.05, less 5 per cent. and 3 per cent.?

A. Yes.

Q. Well, that would bring it down to about——

A. Down to about \$1.90.

Q. Weren't those discounts given by reason of the fact that you had other bids?

A. Yes sir.

Q. What?

A. Yes sir, in 1901 to 1902.

Q. That is what I mean, that the contracts——

A. At that time I had a bid from the Great Northern.

Q. I beg your pardon, I didn't hear that.

A. I say 1901 to 1902 I had a bid of the Great Northern Paper Company.

Q. And it was by reason of that that these discounts were given, wasn't it?

A. I suppose so, because I told them I am going to pay so much; if not, I must leave them.

Q. Certainly.

A. I have to pay for my paper and I don't care who gets the money.

Q. Those were rather unusual discounts, weren't they?

A. They were; it was an unusual thing.

By Mr. OLDS:

Q. Was the contract that you made in 1901 a one year contract or a two years' contract?

A. One year contract as far as I recollect.

Q. And the one made in 1902 was a one year contract?

A. It must have been the same.

167 Q. And the only contract you made for two years is this last contract?

A. Is this last contract.

Subscribed and sworn to before me this — dat of —, 1905.

Special Examiner.

- 168 N. A. HOYT, sworn as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. OLDS:

Q. Where do you reside, Mr. Hoyt?

A. In Milwaukee, Wis.

Q. What is your business?

A. I am editor of the Daily News and president of the News Publishing Company.

Q. The Daily News is a paper published daily in this city?

A. Yes sir, the Milwaukee Daily News.

Q. How long have you been editor of the Daily News and publisher of that paper?

A. About sixteen or seventeen years.

Q. Have you had charge of the purchase of news print paper used by your company in the publication of that newspaper?

A. Whenever contracts are made I always take a hand in the making of them; Mr. Parke also; we consider the thing together. Mr. Parke is the business manager. I always take a hand in the contract making.

Q. Prior to 1900 state what the conditions were in respect to the existence of competition or the lack of competition in making your contracts for the supply of news print paper.

Objected to by defendants as irrelevant, incompetent, immaterial and calling for the opinion of the witness.

A. During that period, the years preceding that, we always had competition. That is, we had manufacturers or their agents coming in seeking to sell us paper.

- 169 Q. Can you name any of the manufacturers to whom you refer?

A. We used to be called upon during that period by the Combined Locks Paper Company, of Combined Locks, Wis.; the Badger Paper Company, of Kaukauna; the Winnebago Paper Company, of Neena; Mr. Nash of the Centralia Pulp and Water Power Company called, and the Manufacturers Paper Company of Chicago.

Q. Did you receive calls from these people or people such as those you have mentioned when you came to make a contract prior to 1900?

Objected to by defendants for all the reasons stated, and as leading.

A. They would come in some time during the year or about the time we were ready to make contracts, and some would come in at periods when we were under contract, and we would tell them about the time our contract would expire and we would be glad to have them come in at that time and talk with us.

Q. Generally, of whom did you purchase paper prior to 1900?

Objected to as irrelevant and immaterial.

Q. That is, during the years immediately prior.

A. The Combined Locks Paper Company, the Manufacturers Paper Company, the Winnebago Paper Company.

Q. Now, after the General Paper Company was organized in 1900, what was the condition that you met with — respect to the existence or non-existence of competition in making your contracts?

170 Objected to by defendants as irrelevant, immaterial, leading and calling for the opinion of the witness.

A. The first contract after 1900, after the formation of the General Paper Company, was made with the Great Northern Paper Company. There was competition.

Q. That is the first contract?

A. That is the first contract we made after the formation of the General Paper Company.

Q. And when was that made?

A. That was made in February, 1901.

Q. Now what was the competition, between what parties?

A. The competition was between the General Paper Company (the General Paper Company was a candidate for the contract) and the Great Northern Paper Company.

Q. What took place in the process of negotiations for that contract?

A. During the period of the negotiations for the contract the General Paper Company was represented by Mr. Reynolds. I think this initials are E. A.

Q. E. A. D. Reynolds?

A. E. A. D. Reynolds, yes. He called at our office a couple of times in connection with it, and we looked about for competition in that connection at that time, and we learned of the Great Northern Paper Company. We learned it was just about going into commission as a mill, or just about that time.

Q. Did you find any other competitor of the General Paper Company at that time than the Great Northern?

171 Objected to by defendants as irrelevant, immaterial and leading.

A. No, that was the only competition that we were able to learn of at that time.

Q. You say Mr. Reynolds called two or three times; did he?

A. He called two or three times about that period.

Q. What price did Mr. Reynolds start in at?

Same objection.

A. I notified—if you would like to have me tell just how the transaction occurred on that contract——

Q. Just tell how the contract was let and all the circumstances surrounding it.

Objected to as incompetent, irrelevant, immaterial and leading.

A. I learned of the Great Northern competition finally through Mr. Bouer, locally here. At that time he was the representative. And I learned that Mr. Mix, who at that time was with the International, the representative of the International Paper Company at Chicago, was to leave the International and go with the Great Northern Paper Company of Maine as their agent. A meeting was arranged between Mr. Mix and myself and I went to Chicago to see him. We talked over the matter of contract and coming to some understanding. Finally, he says, "Mr. Hoyt, I will bid on your contract, only I want to know this: When are you going to be ready to talk prices?" I told him in about a week, that I
172 would hold the matter open that long. He said at that time he would be out of the city and couldn't come to Milwaukee, but he asked me if he was not present and if he were the lowest bidder whether he would get the contract, that is other things being equal, quality of paper, etc., and I told him he certainly would; and he said, "I will take your word for it;" he said, "I will not be there and I will give you my price." He gave me the price, and I came to Milwaukee and waited, and on the day for the expiration Mr. Reynolds came to the office representing the General Paper Company. Mr. Reynolds gave me his price, and I told Mr. Reynolds there was a bid lower than his, and he was surprised to learn that such was the case. I had known Mr. Reynolds quite a time; he had previously been with the Manufacturers Paper Company, and he felt quite surprised to find out there was another bidder in the matter, and he asked me who it was. I said that I didn't feel that I should tell him that, that it was a matter of business with me, and that he was not the successful bidder of the contract. He said, "Mr. Hoyt, just wait a minute, I want to telephone to Chicago before you close that matter." First he did this: He dropped his price 5 cents a hundred, and then he dropped another 5 cents. I told him no, he couldn't get the contract. He said, "Let me call up my office," and he went to the telephone, was gone some little time and came back into my office, and he then said to me, "I am going to
173 get this contract." He says, "I will make a price to take this contract." He then dropped another 5 cents, and I shook my head. He started in, I am quite positive, at \$2.35. He dropped down to \$2.15. I then stopped him. I said, "Mr. Reynolds, I don't care to have you bid further on this matter. I have passed my business word to the man who has bid against you in this matter, that if he were the lowest bidder he should get this contract, no matter what happened on the day of the bidding, and I shall deliver the goods. I don't hesitate to tell you that you have bid below the price set but I shall deliver the goods to this gentleman. I can't let you have this contract no matter what your bid should be."

Q. Did you make a contract with the Great Northern Paper Company?

A. I then closed the contract with the Great Northern Paper Company in a few days after that, not just on that day.

Q. How long did that contract with the Great Northern run?

Objected to as irrelevant, incompetent, immaterial and on the ground the contract is the best evidence.

A. It was made at that time for a year. This was in February. A year from February, 1901.

Q. Have you that contract?

A. That contract has disappeared some way or other. I had occasion to use it a year ago last February, I had occasion to look at it then, and I couldn't find it; I don't know what has become of it. I have looked for it in the meantime.

174 Q. That contract was for one year, you say?

A. Yes.

Q. At what price?

A. At \$2.20, less 3 per cent.

Q. Did you pay that under the contract during its continuance?

A. I paid that on that contract until July of 1901. About the middle of July Mr. Mix made a presentation to us to this effect, that if we would enter into a contract from that time on for two years and six months, making the contract period over all three years, that the price would then be adjusted at a different rate. That is, in the original contract this understanding was had, that if the market dropped we were to have the benefit of the market from \$2.20 down, and he said in July if we would do that the price would be made for the balance of the term of the contract at \$2, less 3 per cent.

Q. For two years and six months?

A. For two years and six months.

Q. If you would make a contract?

A. Yes, if that arrangement was made the price would be \$2.

Q. Did you make that arrangement?

A. The arrangement was made.

Mr. FLANDERS: That is objected to for the same reasons, on the ground that the contract is the best evidence, irrelevant and immaterial, and I move to strike the answer out for these reasons.

WITNESS: That contract was made, and it expired in February, 1904.

175 Q. And where did the paper come from under that contract, Mr. Hoyt?

Objected to as irrelevant and immaterial.

A. The bills of lading disclosed that up to within about six to eight months of the completion of the contract the paper came from

the East. Thereafter, from 6 to 8 months, the last part of the contract the bills of lading disclosed it came from Grand Rapids, Wis.

Q. What mill, do you know?

A. I don't know the name of the mill other than the Grand Rapids Paper Company.

Q. One of the mills in the General Paper Company?

A. That is my understanding of the situation.

Mr. FLANDERS: I move to strike out the last answer as irrelevant, incompetent, immaterial, and hearsay.

Q. After that contract expired what did you do with reference to getting a supply of paper?

A. We tried to renew our contract with the Great Northern Paper Company. In the meantime we had been promised by the general manager (Mr. Dillon I think his name was; he visited us at our office about a year before the contract expired)—he said that he wished to renew with us and he would renew and he would see we were treated fairly with reference to the question of price and would protect us against what he said was a closed market in this territory, that we should have competition. At the end of that time we tried to have that matter redeemed through Mr. Bouer, who informed us that it could not be done, that the Great Northern Paper Company could not renew that contract, and we then made a contract with the General Paper Company.

176 Q. Did you find any other source from which you could get paper at that time?

Objected to as irrelevant, immaterial and leading.

A. We knew of no other source to appeal to except the General Paper Company.

Q. Did you try to learn of any other source?

A. We tried to learn by making inquiry around if there was competition or a mill that we could get in on, but we couldn't find any mill.

Q. What inquiries did you make?

A. Well, those were things I didn't attend to myself particularly; Mr. Parke did that part of it, and I don't recollect just now, but he said he tried to find mills.

Mr. FLANDERS: I object to that and move to strike the answer out.

Q. You didn't make the inquiry yourself?

A. I didn't make the inquiry myself.

Q. Have you the contract you made at that time, in February, 1904, with the General Paper Company?

A. Yes, sir.

Q. Will you produce it, please?

Witness produces paper, which is marked Petitioner's Exhibit
148.

Q. Is Petitioner's Exhibit 148 the contract of which you speak?

A. It is.

177 Q. I notice that this contract purports to be between you and E. A. Bouer representing the General Paper Company.

A. That is the way the contract was drawn, Mr. Bouer representing the General Paper Company.

Q. Was Mr. Bouer present at that time?

A. Yes.

Q. Anybody else?

A. Mr. John A. Davis was present at the time the contract was made.

Q. Of the General Paper Company?

A. Yes. It was made in Mr. Bouer's office, in the Evening Wisconsin Company. They had both waited on us previous to the signing of the contract.

Q. Was the contract made out and signed at that time?

A. It was.

Q. In the office.

A. It is written in Mr. Davis' handwriting, the body of the contract, and signed by Mr. Bouer, and by myself on behalf of the News Publishing Company.

Q. It was delivered to you at that time, was it?

A. It was delivered at that time.

Q. Was anything said at that time about getting the approval of any mill?

Objected to by defendants as irrelevant, immaterial, and leading.

A. There was not.

Q. At the expiration of this contract, in February, 1905, what did you do about getting your supply of paper?

A. We looked about to see if we could learn anything about competition again, and in that respect we had what we regarded somewhat of a nibble through a broker from Chicago.

178 Q. Did *he* broker make a price to you?

A. He quoted a price, yes.

Q. Who was the broker?

A. Cady & Company.

Q. Was the price satisfactory?

Same objection by defendants.

A. The price was one that we probably would have taken if we felt satisfied they could have delivered the paper; and on the other hand the difference between that price and the price agreed upon by the General Paper Company, with whom we made the contract, was so slight we felt that under all the circumstances and the conditions and the strength of the General Paper Company and the situation that it would be better business discretion for us to sign with the General Paper Company.

Q. And you closed the contract with the General Paper Company?

A. We closed the contract with the General Paper Company.

Q. Did you find any other source of supply than Cady & Company at that time?

A. No, there was no other.

Q. You say Cady & Company could not satisfy you that they could make delivery?

Same objection by defendants, and as leading.

A. We felt it was better discretion under all the circumstances for us to close with the General Paper Company because we were
179 not satisfied as to where Mr. Cady would get his supply of paper, and we did not want to be caught in that respect.

Q. Have you the last contract that was made?

A. I have.

Witness produces paper, which is marked Petitioner's Exhibit
149.

Petitioner offered in evidence Petitioner's Exhibit 148.

Objected to by defendants as incompetent, irrelevant and immaterial.

Mr. FLANDERS: Can you read that which is written on the margin?

WITNESS: "It is agreed that the contract is intended to cover publisher's supply for period mentioned but not to exceed 700 tons; settlement to be made for such tonnage only as publisher's supply for the period mentioned would require."

Q. This paper, marked Petitioner's Exhibit 149, is the contract that you last made with the General Paper Company is it?

A. Yes sir.

Q. Who represented the General Paper Company when that contract was made?

A. Mr. Davis and Mr. Bouer.

Q. They were both present, were they?

A. They were both present.

Q. Was the contract made out and signed at your conference with them?

A. It was; Mr. Davis wrote the contract and signed it for the General Paper Company, and Mr. Bouer wrote his name under. Mr.

Davis signed it, and Mr. Bouer signed it at Mr. Davis' request.
180 Q. Was anything said about getting any approval of this contract from the mill?

Objected to for the same reasons, and as leading.

A. There was not.

Q. Did you discuss with Mr. Davis at this time the subject of prices?

A. We did.

Q. And just what was that discussion?

A. The price finally agreed upon was \$2.20 a hundred. He had asked \$2.25, net that was, both prices, and we had a better price, a little better than \$2.20 from Cady & Company; we told them we had a better bid than that (didn't tell them from whom). We negotiated back and forth, and Mr. Davis made the remark that possibly a little better price than that could be made if the contract were to extend over more than a year, and that question was considered; we offered him a two years' contract, and asked him what price he would make. He and Mr. Bouer retired from the office where Mr. Park and I were sitting, they went out and came back and said they would make a price of \$2.20. We asked them about that price; we said we didn't want an inside cinch on anybody in competition with us, that we wanted to pay the same price that others were paying for paper, we didn't ask for an inside price against anybody, but did ask a price that would not put us at a disadvantage with our competitors in the same field we circulated, in our jurisdiction here as publishers, and we must have a price that would conform to that, and Mr. Davis gave us to understand when we agreed on that price of \$2.20 that there would be no better price in this jurisdiction than that.

Mr. FLANDERS: I move to strike out the latter portion of the witness' answer as to what Mr. Davis gave him to understand, as hearsay, irrelevant and immaterial.

Q. Did Mr. Davis say that?

A. Mr. Davis said that we would be protected against anybody in our jurisdiction having a better price than we were getting.

Q. Has this contract ever been modified since it was made?

A. No.

Q. Since the General Paper Company was organized have any of these Wisconsin mills made any bids for your contract, that is, the mills that are in the General Paper Company?

Objected to as irrelevant and immaterial.

A. I have just this knowledge touching that point: I understood from Mr. Cady—

Q. Well, I don't ask you to give what you heard from other people; I mean bidding on your contract.

A. No, none of them came to the office at all.

Cross-examination.

By Mr. FLANDERS:

Q. What was it you understood from Mr. Cady?

A. Mr. Cady told me about the Cheboygan mill, that he was figuring to get some paper from that; that it had been a member of the General Paper Company but had left and gone out, and that it expected to be where it could furnish paper to the trade.

Q. When was it that he told you that?

A. The latter part of January.

Q. This year?

A. This year, yes.

Q. Now, Mr. Hoyt, you are the editor in chief of the News, are you not?

A. Yes.

Q. And have been since its organization?

A. Yes.

Q. And your time is mostly devoted to the editorial department of the business, is it not?

A. Generally speaking; I generally supervise on business matters.

Q. But such connection as you had with the purchase of paper was practically after Mr. Parke had looked it up?

A. Generally speaking. Sometimes it is. Sometimes he called me in just as soon as the contract. I always step in whenever we make a contract for paper.

Q. Yes, but down to the time the thing culminates you leave it to him as a rule, don't you?

A. Generally, people coming into the office, they go to Mr. Parke; if he is not there they come to me.

Q. But as a rule they would go to him?

A. Yes; they would ask for the business man.

Q. It is in his department?

A. It is in his department, primarily.

Q. And you didn't yourself take any steps to get any bids on any of these occasions, did you,—personally?

A. Oh, not since the organization of the General Paper
183 Company. Mr. Bouer came to the office often to see me.

Previous to that I used to attend to the correspondence, previous to 1900.

Q. I mean previous to 1900.

A. Always see Mr. Bouer on the contract question.

Q. But you didn't yourself, personally, take any steps to get any bids outside, such as came from Mr. Bouer and the General Paper Company?

A. I did no correspondence, or anything of that kind.

Q. Or see anybody else?

A. Sometimes, if they came to the office.

Q. Well, did you as a matter of fact see anybody else about bids besides Bouer and the General Paper Company?

A. I remember Mr. Nash coming to see me once and having quite a talk with me.

Q. That was since 1900?

A. No, I guess that was prior to 1900.

Q. Since 1900 have you seen anybody except the General Paper Company and Bouer?

A. No. Oh, yes, I saw Mr. Cady and his representative.

Q. That was last winter?

A. That was last winter, yes.

Q. He came to see you?

A. Yes; the representative came first, and then Mr. Cady himself came.

Q. But you didn't, yourself, actually bestir yourself to get any bids from anybody, did you?

A. No.

Q. Whatever was done in that direction, if anything, was done by Mr. Parke?

A. Yes.

184 Q. Then, of your own knowledge, you don't know whether there was any other source from which paper could have been obtained, or not, do you?

A. I had no contact other than just what I have testified to.

By Mr. OLDS:

Q. If there had been any other bids on your contract, or anybody writing you offering paper, you would have known about it, would you?

Objected to by defendants as irrelevant, immaterial, incompetent, leading and suggestive.

A. It would have been called to my attention, yes. — — —

Subscribed and sworn to before me this — day of —, 1905.

— — —
Special Examiner.

By consent of all parties, the hearing was adjourned until July 6, 1905, at 10. a. m., at Milwaukee, Wis.

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Mr. Flanders.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

THE UNITED STATES OF AMERICA, Petitioner, }

vs.

GENERAL PAPER COMPANY ET AL., Defendants. }

Testimony of E. T. Harmon.

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ROBERT S. TAYLOR,
Special Examiner.

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MILWAUKEE, THURSDAY, July 6, 1905.

By consent of all parties the hearing before the examiner was adjourned until July 7, 1905, at 10 a. m.

MILWAUKEE, FRIDAY, July 7, 1905.

The hearing before the examiner was resumed at No. 314 Federal building, at 10 a. m.

Present: On behalf of the petitioner, Mr. Kellogg and Mr. Olds; on behalf of the defendants, Mr. Flanders and Mr. Fawcett.

E. T. HARMON, being duly sworn as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. OLDS:

Q. What is your business, Mr. Harmon?

A. I am a manufacturer of paper.

Q. At the present time?

A. I am interested in the manufacture of paper.

Q. What company are you interested in at the present time?

A. I am interested in the Merrill Paper Manufacturing Company and the Centralia Pulp and Water Power Company.

Q. Is the Merrill Paper Manufacturing Company a concern doing business at the present time?

A. No sir; they have not started yet.

Q. It is a new concern?

A. It is a new concern.

Q. And what is your interest in the Centralia Pulp and
187 Water Power Company?

A. You mean in dollars and cents, or—

Q. Oh, no; just as stockholder or officer.

A. I am a director.

Q. You are a director in that company?

A. Yes sir.

Q. And, I presume, also a stockholder?

A. Yes sir.

Q. Have you ever been connected with the General Paper Company?

A. I have.

Q. In what capacity?

A. As a director.

Q. Have you held any other office in that company?

A. No sir.

Q. You have been a stockholder, have you?

A. Yes sir.

Q. And have you been connected with any of the other constituent mills of the General Paper Company other than the Centralia Pulp and Water Power Company?

A. Yes sir.

Q. What mills?

A. The Grand Rapids Pulp and Paper Company.

Q. And what has been your connection with that company?

A. I was manager.

Q. Any other office that you held?

A. I was president.

Q. President and manager. How long were you president and manager of the Grand Rapids Pulp and Paper Company?

A. About five years I think.

Q. Beginning when?

A. March 5, 190— No, I wasn't president at that time. First, as manager. I took the mill March 5, 1900.

Q. And you continued to be manager how long?

A. Up to the 5th of last month.

Q. And when did you become president of the Grand Rapids Pulp and Paper Company?

188 A. I think that was in January, 1901.

Q. How long did you hold the office of president?

A. From that time up to the 5th of June.

Q. Of this year?

A. Yes sir.

Q. How long were you a director of the General Paper Company?

A. I am still a director.

Q. You are still a director?

A. Yes sir.

Q. And you have been a director from the organization of the company to the present time, have you?

A. Yes sir.

Q. What grades of paper has the Grand Rapids Pulp and Paper Company manufactured during the time that you have been connected with it?

A. Print and wall paper.

Q. News print and wall paper?

A. Yes sir.

Q. Wall paper is otherwise known as hanging or hanger paper, is it not?

A. Yes sir.

Q. Have you manufactured any other grades?

A. No.

Q. How has the output of the Grand Rapids Pulp and Paper Company been sold during the time that you have been connected with the company?

A. Well, from March 5, 1900, to the 1st of August I sold the product, and from that time on it was sold by the General Paper Company.

Q. From August 1st on it has been sold by the General Paper Company?

A. I think that is the date, about.

Q. Under contract made between the Grand Rapids Pulp and Paper Company and the General Paper Company?

A. Yes sir.

189 Q. Taking, for example, the year 1904, state in detail just how the product of the Grand Rapids Pulp and Paper Company, so far as hanging paper or wall paper is concerned, was sold through the General Paper Company, having particular reference to the price and how the price was made.

Mr. FLANDERS: That is objected to as irrelevant, incompetent, immaterial, and for the further reason that the witness has stated that the contract is in writing, and the contract is the best evidence. The contract is in writing, isn't it?

WITNESS: Yes sir.

The question was read to the witness.

A. I couldn't answer any different than the wording of the contract.

Q. Was there a fixed or flat price at which your hanging paper was sold during the year 1904 through the General Paper Company, as between the General Paper Company and the Grand Rapids Pulp and Paper Company?

Objected to by defendants as irrelevant, incompetent, immaterial, for the reason that the contract is the best evidence, and as leading.

A. It was sold according to contract.

Q. Well, the contract, Mr. Harmon, made no mention of the prices at which the paper was to be sold, did it?

Mr. FLANDERS: That is objected to as stating a fact not in accordance with the evidence. The contract expressly provides that the orders are subject to the approval of each mill,—prices and customers and everything else.

190 Q. I am not talking about the prices and everything else. Did the contract make any mention of the exact price at which the paper was to be sold?

Same objection by defendants, and on the ground that the paper is the best evidence, and as leading.

A. I can't answer it any different than the contract—the wording of the contract.

Q. Did the Grand Rapids Pulp and Paper Company have any arrangement with the General Paper Company during the year 1904 with reference to a fixed or flat price for hanging paper sold during that year, as between the two companies?

Same objecting by defendants, and as leading and on the ground that the contract is the best evidence.

A. I refuse to answer that under the advice of the attorney.

Q. Well, your attorney hasn't advised you not to answer, Mr. Harmon.

A. I am a little previous yet.

Q. I am not sure that he is your attorney ; I am not informed that he is.

A. Well, being a member of the General Paper Company I assume that he is my attorney still.

Q. Do you refuse to answer that question ?

A. Yes.

Q. What price did the Grand Rapids Pulp and Paper Company get for the hanging paper which it sold (per 100 pounds) during the year 1904 ?

Objected to by defendants as irrelevant, incompetent and immaterial.

A. We received the price that is named in the contract.

191 Q. I beg your pardon.

A. We received the price named in the contract.

Q. In what contract ?

A. The contract with the General Paper Company.

Q. You mean to say, Mr. Harmon, that the contract between the Grand Rapids Pulp and Paper Company and the General Paper Company named a specific price for which its hanging paper was to be sold ?

A. Well, yes.

Q. I show you Petitioner's Exhibit 54 in this case, which is a copy of the contract between the Grand Rapids Pulp and Paper Company and the General Paper Company, which was in force during the year 1904 prior to the renewal in December of that year, and I ask you, Mr. Harmon, if you will point out to me what you mean when you say that the contract states the price at which hanging paper was to be sold.

A. Is this a copy of the contract with the General Paper Company ?

Q. A copy of the contract, yes.

A. Well, I don't know as I would find it in here. The special contracts for different orders, that is a wall paper contract ; it is not all on the same form.

Q. Oh, there were other contracts between the General Paper Company and the Grand Rapids Pulp and Paper Company ?

A. No it is not the same wording ; there is no other contract.

Q. What do you mean ?

A. The wording might be a little different.

Q. The wording between what contract and this contract ?

192 A. Is this between the General Paper Company—

Q. The General Paper Company and the Grand Rapids Pulp and Paper Company.

A. No.

Q. Well, you said that that contract stated a specific price at which hanging paper was to be sold. Now is that true ?

A. Well, I will have to go back on that. Of course it varies with the different sales.

Q. It varies with the different sales?

A. Yes.

Q. Was there any arrangement between the Grand Rapids Pulp and Paper Company and the General Paper Company with relation to the amount or price with which the Grand Rapids Pulp and Paper Company was to be credited for hanging paper, per 100 pounds, sold, during the year 1904?

Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and the witness is advised that he need not answer that question.

WITNESS: I refuse to—

Mr. FLANDERS: You adopt that advice, do you, Mr. Harmon?

WITNESS: Yes.

Q. You refuse to answer, do you, Mr. Harmon?

A. Yes, under the advice of counsel.

Q. Was there not a stated or fixed price for hanging paper at which the Grand Rapids Pulp and Paper Company was to be credited in the first instance, as between the General Paper Company and the Grand Rapids Pulp and Paper Company?

193 Mr. FLANDERS: That is objected to as irrelevant, incompetent and immaterial, and the witness is advised that he need not answer that question.

Q. You decline to answer the question?

A. Yes, under advice of my attorney.

Q. Was there not an arrangement between the General Paper Company and the Grand Rapids Pulp and Paper Company whereby the mill was to be credited with a fixed or flat price for hanging paper during the year 1904 and was to receive subsequently its proportion of the amount over and above that fixed price at which the General Paper Company might sell that paper?

Mr. FLANDERS: Same objection, and I give the witness the same advice.

A. I refuse to answer under the advice of the attorney.

Q. Was not the surplus or excess above a certain flat or fixed price for hanging paper sold by the General Paper Company or through the General Paper Company divided up among the mills making hanging paper in proportion to their output?

Mr. FLANDERS: Same objection, and I give the witness the same advice.

A. I refuse to answer on advice of my attorney.

Q. You decline to answer, do you?

A. Yes sir.

Q. I ask you the same question with reference to the year 1903.

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Q. You decline to answer, do you?

A. Yes.

194 Q. I ask you the same question with reference to the year 1902.

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Q. I ask you the same question with reference to the year 1901.

Mr. FLANDERS: Same objection, and I give the witness the same advice.

A. I decline to answer.

Q. And during the year 1900.

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Q. Did not all of the mills manufacturing hanging paper receive a credit of a certain fixed amount or price per 100 pounds for such paper, from the General Paper Company, and receive a dividend comprising its share of the surplus over and above that flat price at which the General Paper Company might sell the product?

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Q. Did not each mill making the General Paper Company its selling agent receive from the General Paper Company a fixed price for its product,—a price equal to all of the mills manufacturing the grade of paper in question, and subsequently receive a proportion of all that might be realized by the General Paper Company through the sale of that paper above that price?

195 Mr. FLANDERS: I make the same objection and I give the witness the same advice.

A. I decline to answer.

Q. Was not all of the balance realized above a fixed price for paper distributed among the mills in the General Paper Company in proportion to their output?

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Q. Did not the General Paper Company take from the constituent mills the paper manufactured by them at a fixed or stated price,
20—385

and then was not the balance realized above that price through the sale of the paper distributed among the constituent mills in proportion to their output, so as to equalize the prices as among the constituent mills?

Mr. FLANDERS: I make the same objection and give the witness the same advice.

A. I decline to answer.

Mr. FLANDERS: And I make the special objection to the counsel assuming a fact not proven in the case, and as not in accordance with the fact in speaking of the constituent mills. There is not a particle of evidence in the case to show there are any constituent mills, and as a matter of fact there are no constituent mills.

Q. Mr. Harmon, by the term "constituent mills" I refer to 196 to the mills which have made General Paper Company their exclusive selling agent. Taking the term in that sense I repeat the question.

Mr. FLANDERS: And I repeat the objection, and I give the witness the same advice, and I respectfully suggest that when the counsel puts a question he put it in accordance with his understanding as he stated it now.

A. I decline to answer.

Q. I ask you the same question as the last question with particular reference to news print paper.

Mr. FLANDERS: I make the same objection and I give the witness the same advice.

A. I decline to answer.

Q. Is all of the news print manufactured by the Grand Rapids Pulp and Paper Company sold through the General Paper Company?

A. Yes sir.

Q. And do you know where it was sold?

A. Yes.

Q. Where during the year 1904?

A. I couldn't tell you now; I don't remember.

Q. Have you any recollection at all?

A. No, I don't remember where it was sold. That is, in 1900?

Q. 1904.

A. 1904?

Q. This last year.

A. Well, there are different contracts; Denver Post, Register and Leader —

Q. What is that?

A. The Register and Leader, of Des Moines. Do you want the wall paper or just the print?

Q. Well, give the print first.

197 A. Well, that is all that I remember.

Q. Any other Denver papers?

A. The Denver Post.

Q. Any other Denver paper besides the Post?

A. No.

Q. Now about the wall paper; do you remember where you sold that during the year 1904?

A. Yes sir.

Q. Where?

A. We sold the Auderbert wall paper mills at Summerdale.

Q. What other mills?

A. Chicago wall paper mills, Chicago. The Star wall paper mills, Joliet.

Q. Has all that hanger-paper that you sold since the organization of the General Paper Company been sold directly through the General Paper Company?

A. Has all of it?

Q. Yes.

A. I think it has.

Q. During the years 1901, 1902, 1903 and 1904?

A. It was all passed through the General Paper Company.

Q. Was not the news print paper manufactured by the Grand Rapids Pulp and Paper Company sold through the General Paper Company or to the General Paper Company at a fixed or stated price per 100 pounds?

Mr. FLANDERS: I make the same objection, and also as leading, and I give the witness the same advice.

A. I decline to answer.

Q. State whether or not the General Paper Company did not take the news print paper manufactured by the Grand Rapids Pulp and Paper Company at a fixed and stated price.

Mr. FLANDERS: I make the same objection, and also as leading, and I give the witness the same advice.

198 A. I decline to answer.

Q. Did not the General Paper Company take the news print paper manufactured by the mills of which it was the exclusive selling agent at a fixed and stated price?

Mr. FLANDERS: I make the same objection, and also on the ground that it is leading, and I give the witness the same advice.

Q. Did not the General Paper Company take news print paper manufactured by the mills of which it was the exclusive selling agent at a stated price, and was not the balance realized from the sale of such paper over and above that stated price divided among those mills making news print paper in proportion to their output, so as to equalize the price among such mills?

Mr. FLANDERS: Same objection, and as leading, and I give the witness the same advice.

A. I decline to answer.

Q. I ask you that question with particular reference to the year 1900.

Mr. FLANDERS: I make the same objection, and also as leading, and I give the witness the same advice.

A. I decline to answer.

Q. The same question with reference to the year 1901.

Mr. FLANDERS: Same objection and the same advice.

A. I decline to answer.

Q. And with reference to the year 1902.

Mr. FLANDERS: Same objection and same advice.

199 Q. And with reference to the year 1903.

Mr. FLANDERS: Same objection and same advice.

A. I decline to answer.

Q. And the year 1904.

Mr. FLANDERS: Same objection and same advice.

A. I decline to answer.

Q. And the year 1905.

Mr. FLANDERS: Same objection and same advice.

A. I decline to answer.

Q. Do the books of the Grand Rapids Pulp and Paper Company show whether or not the paper, both hanging and news print, manufactured by that company, was disposed of through the General Paper Company at a fixed or stated price.

Mr. FLANDERS: Same objection, and also on the ground that the books are the best evidence, and I give the witness the same advice.

A. I decline to answer.

Q. Do the books of the Grand Rapids Pulp and Paper Company show or give any information as to whether or not the Grand Rapids Pulp and Paper Company received from or through the General Paper Company, either directly or indirectly, any credit representing a proportion received by the Grand Rapids Pulp and Paper Company of the balance realized over and above a fixed and stated price for paper manufactured by that company?

Mr. FLANDERS: Same objection and the same advice.

200 A. I decline to answer.

Q. Who is the president of the Grand Rapids Pulp and Paper Company at the present time?

A. I don't think they have any.

Q. Who is secretary?

A. William Scott.

Q. Who is the manager?

A. I think it is Mr. Simons.

Q. What are his initials?

A. I don't know. The gentleman over there could tell you.

Q. Who has charge of the books of that company?

A. Mr. Slaughter.

Q. What are his initials?

A. L. M.

Q. In what capacity is he connected with the Grand Rapids Pulp and Paper Company?

A. He is a book-keeper.

Q. How long has he been a book-keeper?

A. Oh, it is about a year, I think.

Q. Who was in charge of the books, that is, in immediate charge of them, prior to the time that Mr. Slaughter took charge of them?

A. Mr. Schnabel.

Q. And how long did he have charge of them?

A. From the commencement of the mill, from the time it commenced running; I think it must have been seven or eight years, seven years at least.

Q. He was book-keeper, was he?

A. Yes sir.

Q. Where is he now?

A. He is in Grand Rapids.

Q. Does he work for the Grand Rapids Pulp and Paper Company?

A. No sir.

Q. What is his business?

A. He is a book-keeper.

Q. For some other company?

A. Yes sir.

201 Q. State whether or not there was any arrangement or understanding among the mills manufacturing hanging paper, or among those mills and the General Paper Company, whereby the prices which each mill should receive for hanging paper were equalized.

Mr. FLANDERS: Same objection, and I give the witness the same advice.

A. I decline to answer.

Q. I ask you the same question with reference particularly to news print paper.

Mr. FLANDERS: Same objection, and I give the witness the same advice.

A. I decline to answer.

Mr. OLDS: I think we will suspend the examination of this witness at present until we can get answers to these questions.

Cross-examination.

By Mr. FLANDERS:

Q. Mr. Harmon, every order that the mill filled, every order that the General Paper Company secured for the mill with which you were connected, which was filled by your mill, was accepted by your mill, wasn't it?

A. Yes sir.

Q. And those orders and acceptances are in writing?

A. Yes sir.

Q. You are a stockholder and also a director in the Centralia Pulp and Water Power Company, are you not?

A. Yes sir.

202 By Mr. KELLOGG:

Q. Will you produce those orders and acceptances?

Mr. FLANDERS: I represent the Centralia Pulp and Water Power Company in this case, and I say to you now that if those are required to be produced they will be produced, but they will not be submitted to your inspection.

Mr. KELLOGG: Will they be produced so that we can put them in evidence?

Mr. FLANDERS: No sir, they will not.

Q. Will you produce those orders which Mr. Flanders referred to, before the examiner, so we may put them in evidence?

Mr. FLANDERS: You need not answer that question, Mr. Harmon. I have notified the counsel upon the other side, and I repeat it, that if he calls for those contracts to be produced here they will be brought here, but they will not be submitted to his inspection in the present state of the record.

Q. Do you decline to answer that question?

Mr. FLANDERS: I advise you not to answer that question. They are not in your control.

Mr. KELLOGG: I want the witness to say whether he will answer or not.

WITNESS: I decline under the advice of my attorney.

Q. Have you given all the excuses you desire to give for not answering this question, Mr. Harmon?

202-230 Mr. FLANDERS: You need not answer that question, Mr. Harmon. I advise you you need not answer that question.

Q. Do you decline to answer?

A. I decline to answer.

Mr. KELLOGG : We ask to suspend the examination of this witness pending an application to the court to compel the witness to answer these questions.

Mr. FLANDERS : We haven't any objection to the suspension as long as you don't suspend the counsel.

Mr. KELLOGG : Oh, we won't suspend you.

Petitioner offered in evidence Petitioner's Exhibit 150, and it is admitted that the same is a correct list of the individuals to whom stock was issued with the names of the corporations, respectively, represented by said individuals, the dates of the issuance of the stock to said individuals for their respective corporations, together with copies of all outstanding certificates of stock and of the endorsements thereon and assignments thereof, which the defendants agreed and consented to produce in their statement on page 268 of the type-written record.

Petitioner also offered in evidence Petitioner's Ex. 149.

Objected to by defendants as irrelevant, incompetent and immaterial.

Hearing adjourned until July 8, 1905, at 10 a. m.

* * * * *

No. of certf.	Date issued.	No. of sh-res.	To whom issued.	How located.	How endorsed.	Corporations represented by certificate holder.
1	1901.	125	J. A. Kimberly. }	Out.....	To K. & C. Co.....	Kimberly & Clark Co.
2	Dec. 31	84	J. C. Kimberly. }	Canc'l'd.	".....	"
3	"	5	H. Babcock.....	Out.....	".....	"
4	"	86½	J. S. Van Nortwick.....	".....	½ to Wm. Van Nortwick.	Combined Locks Pa. Co.
5	"	37½	C. W. Howard.....	".....	Not endorsed.....	C. W. Howard Co.
6	"	60	L. M. Alexander.....	".....	Blank.....	J. Edwards Mfg. Co.
7	"	97½	T. E. Nash.....	".....	".....	Nekocosa Paper Co.
8	"	33½	F. Garrison.....	".....	".....	Centralia Pulp & Water Power Co.
9	"	20½	E. T. Harmon.....	".....	".....	Grand Rapids Pulp & Paper Company.
10	"	22	".....	".....	".....	Wisconsin River Paper & Pulp Company.
11	"	35	G. A. Whiting.....	".....	Not endorsed.....	Wausau Pa. Mills Co.
12	"	25	C. A. Babcock.....	".....	".....	Tomahawk Pulp & Pa.
13	"	45	W. L. Edmonds.....	".....	".....	Dells Paper & P. Co.
14	"	15	A. M. Pride.....	".....	".....	Falls Mfg. Co.
15	"	75	D. R. Davis **.....	Canc'l'd.	".....	Hennepin Pa. Co.
16	"	36	E. A. Edmonds ***.....	".....	Not endorsed.....	General Paper Co.
17	"	22½	B. F. Nelson.....	Out.....	Blank.....	Itasca Paper Co.
18	"	1	W. Z. Stuart.....	".....	Not endorsed.....	Northwest Paper Co.
19	1902.	1	A. C. Bossard.....	".....	Blank.....	Itasca Paper Co.
20	Jan. 23	60	C. I. McNair.....	".....	Not endorsed.....	Petoakey Fib. Pa. Co.
21	Apr. 10	29	A. C. Bossard.....	".....	".....	Riverside F. & P. Co.
22	May 22	21	F. M. Alken #.....	Canc'l'd.	Not endorsed.....	Wolf River Pa. & F. Co.
23	Jul. 22	28	W. B. Murphy.....	Out.....	".....	Menasha Paper Co.
24	Dec. 9	28	F. D. Naber.....	".....	Blank.....	Flambeau Paper Co.
25	"	54	M. H. Ballou #.....	Canc'l'd.	".....	"
26	"	27	E. P. Sherry.....	Out.....	".....	"
27	"	1	E. A. D. Reynolds.....	".....	".....	"
28	1903. 1	75	W. L. Davis **.....	".....	".....	Dells Pa. & P. Co.
	Nov. 1					

29	Nov. 30	44	J. C. Kimberly *.....	"	Over to K. & C. Co.	Kimberly & Clark Co.
30	"	4	F. J. Sensesbrenner *.....	"	Blank...	Petokey F. Pa. Co.
31	Dec. 31	21	L. H. Cheeseman ##.....	"	Not endorsed.....	Falla Mfg. Co.
32	1904.	34	E. A. Edmonds ***.....	"	"	"
33	Dec. 13	1	J. H. Delbridge ***.....	"	"	Consolidated Water Power & Paper Co.
34	"	1	Geo. W. Mead ***.....	"	"	Menasha Paper Co.
35	"	53	M. H. Ballou ##.....	"	"	"
36	"	1	S. E. Smith ##.....	"	"	"

* Certificate No. 2 cancelled and certificate- numbers 29 and 30 issued in place thereof.

** Certificate No. 15 cancelled and certificate number 28 issued in place thereof.

*** Certificate No. 16 cancelled and certificate- numbers 32, 33 and 34 issued in place thereof.

Certificate No. 22 cancelled and certificate number 31 issued in place thereof.

Certificate No. 25 cancelled and certificate- numbers 35 and 36 issued in place thereof.

232 "Incorporated under the Laws of the State of Wisconsin."

Number 1. General Paper Company. Shares, 125.
Capital Stock, \$100,000.00.

This certifies that J. A. Kimberly is the owner of one hundred & twenty-five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received I hereby sell, assign and transfer unto Kimberly & Clarke Co. (125) shares of the capital stock represented by the within certificate and do irrevocably constitute and appoint — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Jan'y 25, 1902.

In presence of J. A. KIMBERLY.

F. J. SENSENBRENNER.

"Incorporated under the Laws of the State of Wisconsin."

Number 2. General Paper Company. Shares, —.
Capital Stock, \$100,000.00.

This certifies that — is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by holder hereof in person or by attorney upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

—, Secretary.

—, President.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — shares of the capital stock represented by the within certificate and do irrevocably constitute and appoint — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

— —.

233 "Incorporated under the Laws of the State of Wisconsin."
 Number 3. General Paper Company. Shares, 5.
 Capital Stock \$100,000.00.

This certifies that H. Babcock is the owner of five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900; }
 Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each. [Endorsed on back.]

For value received, I hereby sell, assign and transfer unto Kimberly & Clark Co. (five) shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint ——— to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Jan'y 25, 1902.

In presence of H. BABCOCK.

F. J. SENSENBRENNER.

"Incorporated under the Laws of the State of Wisconsin."

Number 4. General Paper Company. Shares, .86½.
 Capital Stock \$100,000.00.

This certifies that J. S. Van Nortwick, is the owner of eighty six and ½ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation, this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
 Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each. [Endorsed on back.]

For value received, I hereby sell, assign and transfer unto Wm. M. Van Nortwick 43½ shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint ——— to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated ——— 190—. In presence of J. S. VAN NORTWICK.

"One half of this stock belongs to Wm. M. Van Nortwick.

J. S. VAN NORTWICK."

234 "Incorporated under the Laws of the State of Wisconsin."

Number 5. General Paper Company. Shares, 37½.

Capital Stock, \$100,000.00.

This certifies that C. W. Howard is the owner of thirty-seven & ½ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Jan'y 23, 1902. In presence of L. M. ALEXANDER.

E. T. HARMON.

"Incorporated under the Laws of the State of Wisconsin."

Number 6. General Paper Company. Shares, 60.

Capital Stock, \$100,000.00.

This certifies that L. M. Alexander is the owner of sixty shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

235 "Incorporated under the Laws of the State of Wisconsin."

Number 7. General Paper Company. Shares, 97½.
Capital Stock, \$100,000.00.

This certifies that T. E. Nash is the owner of ninety seven ½ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation, this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of T. E. NASH.

"Incorporated under the Laws of the State of Wisconsin."

Number 8. General Paper Company. Shares, 33½.
Capital Stock, \$100,000.00.

This certifies that F. Garrison is the owner of thirty three and ½ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

— — —, President.

— — —, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of F. GARRISON.

236 "Incorporated under the Laws of the State of Wisconsin."

Number 9. General Paper Company. Shares, 20 $\frac{3}{4}$.

Capital Stock, \$100,000.00.

This certifies that E. T. Harmon is the owner of twenty and $\frac{3}{4}$ shares of one hundred dollars each of the capital stock of the General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of E. T. HARMON.

JNO. E. SCHNABEL.

"Incorporated under the Laws of the State of Wisconsin."

Number 10. General Paper Company. Shares, 22.

Capital Stock, \$100,000.00.

This certifies that E. T. Harmon is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of E. T. HARMON.

JNO. E. SCHNABEL.

237 "Incorporated under the Laws of the State of Wisconsin."

Number 11. General Paper Company. Shares, 35.

Capital Stock, \$100,000.00.

This certifies that Geo. A. Whiting is the owner of thirty-five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 12. General Paper Company. Shares, 25.

Capital Stock, \$100,000.00.

This certifies that C. A. Babcock is the owner of twenty-five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused — certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

238 "Incorporated under the Laws of the State of Wisconsin."

Number 13. General Paper Company. Shares, 45.
Capital Stock, \$100,000.00.

This certifies that W. L. Edmonds is the owner of forty five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 14. General Paper Company. Shares, 15.
Capital Stock, \$100,000.00.

This certifies that A. M. Pride is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

239 "Incorporated under the Laws of the State of Wisconsin."

Number — General Paper Company. Shares, —.
Capital Stock, \$100,000.00.

This certifies that — — is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

— —, President.

— —, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

— —.

"Incorporated under the Laws of the State of Wisconsin."

Number — General Paper Company. Shares, —.
Capital Stock, \$100,000.00.

This certifies that — — is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

— —, President.

— —, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

— —.

240 "Incorporated under the Laws of the State of Wisconsin."

Number 17. General Paper Company. Shares, 22½.
Capital Stock, \$100,000.00.

This certifies that B. F. Nelson is the owner of twenty-two and ½ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 18. General Paper Company. Shares, One.
Capital Stock, \$100,000.00.

This certifies that W. Z. Stuart is the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 31st day of December, A. D. 1901.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of W. Z. STUART.

W. T. HAZARD.

240½ "Incorporated under the Laws of the State of Wisconsin."
 Number 19. General Paper Company. Shares, One.
 Capital Stock, \$100,000.00.

This certifies that A. C. Bossard is the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person, or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused — certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 23rd day of January, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
 Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."
 Number 20. General Paper Company. Shares, Sixty.
 Capital Stock, \$100,000.00.

This certifies that C. I. McNair is the owner of sixty shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 10th day of April, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
 Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of C. I. McNAIR.

241 "Incorporated under the Laws of the State of Wisconsin."
 Number 21. General Paper Company. Shares, 29.
 Capital Stock, \$100,000.00.

This certifies that A. C. Bossard is the owner of twenty-nine shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 22nd day of May, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
 Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number —. General Paper Company. Shares, —.
 Capital Stock, \$100,000.00.

This certifies that — — — is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper —, May, 1900, }
 Milwaukee, Wisconsin.

— — —, President.

— — —, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

242 "Incorporated under the Laws of the State of Wisconsin."

Number 23. General Paper Company. Shares, 28.
Capital Stock, \$100,000.00.

This certifies that W. B. Murphy is the owner of twenty-eight shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 9th day of December, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Date — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 24. General Paper Company. Shares, 28.
Capital Stock, \$100,000.00.

This certifies that F. D. Naber, is the owner of twenty-eight shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 9th day of December, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

243 "Incorporated under the Laws of the State of Wisconsin."

Number —. General Paper Company. Shares, —.

Capital Stock, \$100,000.00.

This certifies that — is the owner of — shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this — day of — A. D. 190—.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

—, Secretary.

—, President.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 26. General Paper Company. Shares, 27.

Capital Stock, \$100,000.00.

This certifies that E. P. Sherry is the owner of twenty-seven shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 9th day of December, A. D. 1902.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — to transfer said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Jan. 28, 1903.

In presence of E. P. SHERRY.

ROSE THOBURN.

244 "Incorporated under the Laws of the State of Wisconsin."

Number 27. General Paper Company. Shares, 1.
Capital Stock, \$100,000.00.

This certifies that E. A. D. Reynolds, in the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 9th day of December A. D. 1902.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto —
— shares of the capital stock represented by the within certificate and do irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—. In presence of E. A. D. REYNOLDS.
F. S. WARREN.

"Incorporated under the Laws of the State of Wisconsin."

Number 28. General Paper Company. Shares, 75.
Capital Stock, \$100,000.00.

This certifies that W. L. Davis is the owner of seventy-five shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this first day of November, A. D. 1903.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto —
— shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—. In presence of W. L. DAVIS.
F. J. SENSENBRENNER.

245 "Incorporated under the Laws of the State of Wisconsin."

Number 29. General Paper Company. Shares, 4½.

Capital Stock, \$100,000.00.

This certifies that J. C. Kimberly is the owner of four and ¾ shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation, this 30th day of November, A. D. 1903.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto Kimberly & Clark Co. — shares of the capital stock represented by the within certificate and do irrevocably constitute and appoint — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Dec. 2, 1903.

In presence of J. A. KIMBERLY.

J. S. HARRIS.

"Incorporated under the Laws of the State of Wisconsin."

Number 30. General Paper Company. Shares, 4.

Capital Stock, \$100,000.00.

This certifies that J. J. SENSENBRENNER is the owner of four shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 30th day of November, A. D. 1903.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

— — —, President.

— — —, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto Kimberly & Clark Co. — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated Dec. 2, 1903. In presence of F. J. SENSENBRENNER.

J. S. HARRIS.

246 "Incorporated under the Laws of the State of Wisconsin."

Number 31. General Paper Company. Shares, 21.
Capital Stock, \$100,000.00.

This certifies that L. H. Cheeseman is the owner of twenty-one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of this corporation this 21st day of December A. D. 1903.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—. In presence of L. H. CHEESEMAN.

"Incorporated under the Laws of the State of Wisconsin."

Number 32. General Paper Company. Shares, 34.
Capital Stock, \$100,000.00.

This certifies that E. A. Edmonds is the owner of thirty-four shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation, this 13th day of December, A. D. 1904.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—. In presence of — — —.

247 "Incorporated under the Laws of the State of Wisconsin."

Number 33. General Paper Company. Shares, one.
Capital Stock, \$100,000.00.

This certifies that J. H. Delbridge is the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 13th day of December, A. D. 1904.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto —
— — shares of the capital stock represented by the within certificate, and do irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 34. General Paper Company. Shares, one.
Capital Stock \$100,000.00.

This certifies that George H. Mead is the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 13th day of December A. D. 1904.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto —
— — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — 190—.

In presence of — —.

248 "Incorporated under the Laws of the State of Wisconsin."

Number 35. General Paper Company. Shares, 53.

Capital Stock, \$100,000.00.

This certifies that M. H. Ballou is the owner of fifty three shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused this certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 13th day of December, A. D. 1904.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received, I hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificates and do irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

"Incorporated under the Laws of the State of Wisconsin."

Number 36. General Paper Company. Shares, 1.

Capital Stock, \$100,000.00.

This certifies that S. E. Smith is the owner of one shares of one hundred dollars each of the capital stock of General Paper Company transferable only on the books of the corporation by the holder hereof in person or by attorney, upon surrender of this certificate properly endorsed.

In witness whereof, the said corporation has caused — certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 13th day of December A. D. 1904.

{ Seal General Paper Company, May, 1900, }
Milwaukee, Wisconsin.

J. A. KIMBERLY, President.

L. M. ALEXANDER, Secretary.

Shares \$100 each.

[Endorsed on back.]

For value received — hereby sell, assign and transfer unto — — — shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint — — — to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated — — — 190—.

In presence of — — —.

249 I hereby certify that the foregoing pages numbered 560 to 606, inclusive, are a true and correct copy of Exhibits 139 to 160, inclusive, introduced in evidence before me as special examiner in the case of United States of America vs. General Paper Company, et al., in the circuit court of the United States for the district of Minnesota, third division, and that said copies of exhibits, together with the copies of exhibits heretofore filed in this cause with the clerk of the United States circuit court for the eastern district of Wisconsin, constitute copies of all the exhibits which have so far been introduced in evidence in said cause.

ROBT S. TAYLOR,
Special Examiner.

Dated St. Paul, Minn., July 22, 1905.

250 In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
vs.
GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of E. T. HARMON.

It is hereby mutually stipulated and agreed between the parties to the above entitled matter that the schedule hereto annexed may be made a part of and attached to the exhibits referred to therein and on file in said matter.

Dated August 12th, 1905.

JAMES M. BECK,
FRANK B. KELLOGG,
DAVIS, KELLOGG & SEVERANCE,
Solicitors for the United States of America.
WINKLER, FLANDERS, SMITH, BOTTUM &
FAWSETT AND
DE FREES, BRACE & RITTER,
Solicitors for General Paper Company and E. T. Harmon.

251 In the Circuit Court of the United States in and for the Eastern District of Wisconsin.

THE UNITED STATES OF AMERICA, Complainant, }
 vs.
 GENERAL PAPER COMPANY ET AL., Defendants. }

In the Matter of E. T. HARMON.

Schedule of Exhibits Nos. 139 to 150, Inclusive.

No.

139. Agreement between Nekoosa Paper Co. and the Journal Company (Milw.) dated August 3, 1899 with renewal to January 1, 1902, written across its face.
 140. Letter, General Paper Co. to L. T. Boyd, m'g'r Milwaukee Journal, dated July 16, 1900.
 141. Letter, General Paper Co. to the Milwaukee Journal, dated Aug. 9, 1901.
 142. Agreement between E. A. Bouer and Milwaukee Journal Co., dated January 25, 1902.
 143. Agreement between E. A. Bouer and Milwaukee Journal Co., dated February 8, 1904.
 144. Agreement between General Paper Co. and the Milwaukee Journal Company, dated February 8, 1904.
 145. Agreement between General Paper Co. and the Journal Company, dated April 21, 1905.
 146. Agreement between General Paper Co. and Germania Publishing Co., dated April 21, 1904, with extension for two years from May 1, 1905 written on margin.
 147. Agreement between General Paper Co. and Germania Publishing Co., dated March 22, 1905 with letter by General Paper Co. attached, dated March 22, 1905.
 148. Agreement between E. A. Bouer, representing General Paper Co., and News Publishing Co., dated January 22, 1904.
- 252
149. Agreement between General Paper Co. and News Publishing Co., dated January 19, 1905.
 150. Schedule and copies of outstanding stock certificates of General Paper Company, referred to in admission on page 268 of the typewritten testimony.

Exhibits 144 to 147 inclusive and Exhibit 149 are in the ordinary form of these agreements with publishers.

253 [Endorsed:] Circuit court of the United States, eastern district of Wisconsin. The United States of America, complainant, vs. General Paper Co. et al., defendants. In the matter of E. T. Harmon. Stipulation and schedule of exhibits. Winkler, Flanders, Smith, Bottum & Fawsett, attorneys at law, Milwaukee, Wis. Telephone main 78. Filed August 21, 1905 Edw. Kurtz, clerk by F. H. Kurtz deputy.

254 UNITED STATES OF AMERICA, }
Eastern District of Wisconsin, } ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that the foregoing pages (numbered from 1 to — inclusive) contain a true and complete transcript of the record and proceedings had in said court in the cause entitled: The United States of America, complainant, vs. The General Paper Company et al., defendants, In the matter of the petition of the United States of America for an order directing E. T. Harmon to answer certain questions, comply with certain requests and produce certain papers, orders and acceptances for inspection by counsel for the petitioner and for the purpose of being offered in evidence upon an examination now pending in said district, as the same remain of record and on file in my office, except that the testimony and exhibits attached to the transcript in the appeals of L. M. Alexander, G. A. Whiting, W. Z. Stuart and General Paper Company certified to the Supreme Court of the United States at the same time as the foregoing transcript are herein referred to and made a part of this transcript in accordance with the stipulation of counsel contained in this transcript.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Milwaukee in the eastern district of Wisconsin in the seventh circuit this 16th day of August in the year of our Lord one thousand nine hundred and five and of the Independence of the said United States the one hundred and thirtieth.

[Seal U. S. Circuit Court, Eastern District Wisconsin.]

EDWARD KURTZ, Clerk.

255

Citation.

UNITED STATES OF AMERICA, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington on the 2nd day of September, A. D. 1905, pursuant to an order granting an appeal from an order and decree filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein E. T. Harmon and General Paper Company are the appellants and you are the appellee, to show cause, if any there be, why the order and decree mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H. Seaman, judge of the circuit court of the United States for the eastern district of Wisconsin this 3rd day of August, A. D. 1905.

WM. H. SEAMAN,
Circuit Judge.

256 [Endorsed:] Citation. Appeal of E. T. Harmon & Gen'l Paper Co. Service admitted this 4th day of August, 1905. Frank B. Kellogg, Robert E. Olds, solicitors for petitioner and appellee. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

257 Supreme Court of the United States.

E. T. HARMON and GENERAL PAPER COMPANY, Appellants, }
 vs.
 THE UNITED STATES OF AMERICA, Appellee. }

It is hereby stipulated and agreed between the appellants above named and the appellee above named, that in the printed transcript of the record certified to the Supreme Court of the United States by the clerk of the circuit court of the United States for the eastern district of Wisconsin upon said appeal, it will be necessary to print only those portions of said transcript designated in the instructions as to printing annexed to this stipulation, the said appellants reserving the right and intending to rely for the reversal of the order appealed from upon each and all of the errors set forth in their assignment of errors contained in said transcript so certified as aforesaid.

WINKLER, FLANDERS, SMITH, BOTTUM &
 FAWSETT AND
 DE FREES, BRACE & RITTER,
 Solicitors for Appellants.

JAMES M. BECK,
 FRANK B. KELLOGG,
 ROBERT E. OLDS, Solicitors for Appellee.

JAMES G. FLANDERS,
 WILLIAM BRACE,
 Of Counsel for Appellants.

258 Appeal of E. T. Harmon and General Paper Company.

Instructions as to Printing.

Print all of clerk's statements connecting different parts of record.
 Subpoena for witnesses (print in full).
 Marshal's return of service of same (print in full).
 Petition for order requiring E. T. Harmon to show cause why he should not answer certain questions, &c. (print in full).
 Schedule of refusals to answer (print in full).
 Complaint and answers in original action (print in full).
 Order that E. T. Harmon show cause why he should not answer (print in full).

Answer of said E. T. Harmon (print in full).

Answer of General Paper Company (print in full).

Order requiring E. T. Harmon to answer (print in full).

Assignment of errors (print in full).

Petition for appeal (print in full).

Bond on appeal (print in full).

Order allowing appeal (print in full).

Order allowing answers to be filed as of July 8, 1905 (print in full).

Stipulation that the testimony and exhibits in the record on the appeals of L. M. Alexander and others may be part of the record on the appeal in this case (print in full).

Testimony of E. T. Harmon and other witnesses (print in full).

Exhibits 139-150 (print only Exhibit No. 150).

Stipulation for filing schedule and making it part of exhibits (print in full).

Schedule of exhibits (print in full).

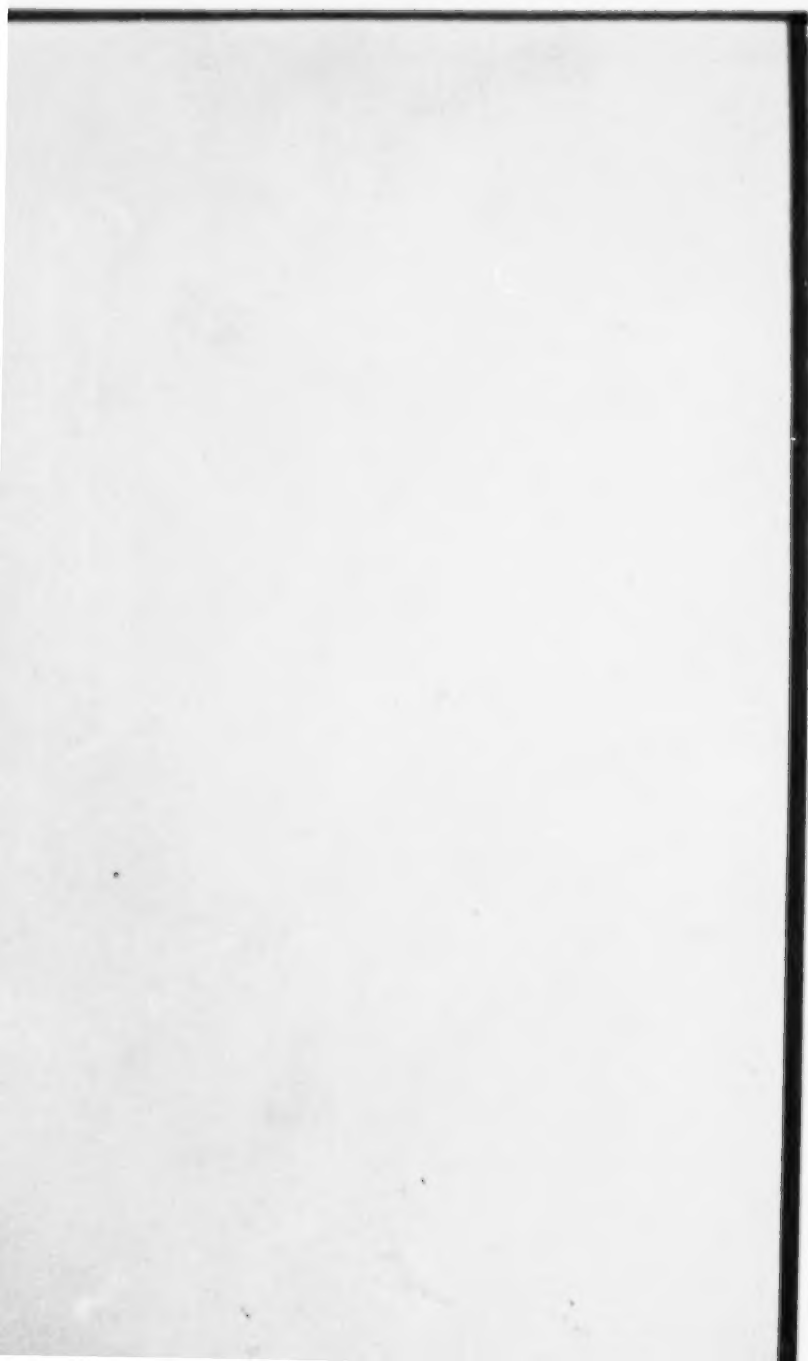
Certificate of clerk of court (print in full).

Citation with acceptance of service of same (print in full).

259 [Endorsed:] 10,887 385. Supreme Court of the United States. E. T. Harmon & General Paper Co., appellants, vs. The United States of America, appellee. Stipulation and instructions as to printing. Winkler, Flanders, Smith, Bottum & Fawcett, attorneys at law, Milwaukee, Wis. Telephone main 78.

260 [Endorsed:] File No. 19,887. Supreme Court U. S. October term, 1905. Term No. 385. E. T. Harmon *et al.*, appellants, vs. The United States. Stipulation and instructions for printing record. Filed August 28, 1905.

Endorsed on cover: File No. 19,887. E. Wisconsin C. C. U. S. Term No. 385. E. T. Harmon and General Paper Company, appellants, vs. The United States. Filed August 26, 1905. File No. 19,887.



In the Supreme Court of the United States.

OCTOBER TERM, 1905.

LEWIS M. ALEXANDER, APPELLANT,
v.
THE UNITED STATES. } No. 381.

GEORGE A. WHITING, APPELLANT,
v.
THE UNITED STATES. } No. 382.

WILLIAM Z. STUART, APPELLANT,
v.
THE UNITED STATES. } No. 383.

GENERAL PAPER COMPANY, APPELLANT,
v.
THE UNITED STATES. } No. 384.

E. T. HARMON AND GENERAL PAPER
Company, appellants,
v.
THE UNITED STATES. } No. 385.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance the above-entitled causes on the docket, and to assign them for hearing at as early a date as the convenience

of the court will permit, stating as the grounds of said motion the following facts:

On December 28, 1904, the United States, proceeding under and pursuant to the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," filed its petition in the United States Circuit Court for the District of Minnesota against the General Paper Company and twenty-three other corporations defendant. The petition in substance avers that the defendants other than the General Paper Company, being practically all of the manufacturers of news print, manila, and fiber papers in the Middle and Western States, had combined and conspired with one another to restrain interstate trade and commerce in the commodities so manufactured by them; and that such combination and conspiracy had been effectuated and carried out by means of the organization of the defendant General Paper Company to act as the exclusive selling agent for each and every of the other defendants, with full power and authority to fix the prices, terms, and conditions for the sale of their joint product. The answers interposed in the suit amounted to a general denial of all of the essential averments of fact.

After issue was joined, an examiner was appointed by the United States Circuit Court for the District of Minnesota, with authority to take testimony both within and without the district. At the hearing before the examiner, which was begun in the city of Milwaukee and State of Wisconsin on the 16th day of May,

1905, the petitioner called for examination the following witnesses, who appeared pursuant to subpoenas *duces tecum* issued upon the order of the United States Circuit Court for the Eastern District of Wisconsin:

L. M. Alexander, secretary and treasurer of the General Paper Company;

George A. Whiting, first vice-president of the General Paper Company;

W. Z. Stuart, general sales manager of the General Paper Company;

E. T. Harmon, president of the Grand Rapids Pulp and Paper Company.

These witnesses, when examined by counsel for the United States, refused to give or produce certain evidence concerning the combination and conspiracy averred in the petition, asserting as a ground for such refusal that the evidence called for was incompetent and immaterial to the issues. Subsequently, when ordered by the United States Circuit Court for the Eastern District of Wisconsin to show cause why they should not testify and furnish the evidence called for, the witnesses filed returns in which they claimed personal privileges under the fourth and fifth amendments to the Constitution of the United States not to disclose the matters as to which they were interrogated, contending that the compelling of such disclosure would amount to an unreasonable search and seizure within the meaning of the fourth amendment, and would be requiring them to give evidence against themselves within the meaning of the fifth amendment. Furthermore, at the same time, the defendant General

Paper Company filed its return, making similar contentions on its own behalf, namely, that to compel it through its proper officers to make the disclosures called for would be in violation of its rights under either or both of said amendments. The United States Circuit Court for the Eastern District of Wisconsin ordered the witnesses to answer each and every of the questions involved, and to produce all of the books and papers called for. From the judgments thus entered appeals have been taken to this court, the appellants contending that, their claims of personal privilege having been overruled by the only court of first instance which had jurisdiction to entertain them, such judgments constituted final determinations of the questions raised.

The testimony in the principal suit can not, with due and proper regard to the interests of the United States, be brought to a close and the cause to a hearing, until the questions of privilege raised by the said witnesses and the said defendant corporation, the General Paper Company, have been finally determined by this court. Inasmuch as these questions, as also the issues in the principal suit, are matters of great and general public interest, in which the United States is directly concerned, it is respectfully submitted that the above-entitled causes should be advanced and as speedily determined as the business of this court will reasonably permit.

HENRY M. HOYT,
Solicitor-General.

SUPREME COURT OF THE UNITED STATES.
October Term, 1905.

No. 381.

LEWIS M. ALEXANDER, APPELLANT,
vs.
THE UNITED STATES.

No. 382.

GEORGE A. WHITING, APPELLANT,
vs.
THE UNITED STATES.

No. 383.

WILLIAM Z. STUART, APPELLANT,
vs.
THE UNITED STATES.

No. 384.

GENERAL PAPER COMPANY, APPELLANT,
vs.
THE UNITED STATES.

No. 385.

E. T. HARMON AND GENERAL PAPER COMPANY,
APPELLANTS.
vs.
THE UNITED STATES.

**APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF WISCONSIN.**

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

These appeals are taken from orders made by the Circuit Court for the Eastern District of Wisconsin, requiring the appellants Alexander, Whiting, Stuart, and Harmon to answer certain questions and produce certain books and papers for use as evidence upon hearings before an Examiner appointed to take testimony for use in a suit in equity pending in the Circuit Court for the District of Minnesota, Third Division. The proceedings in which the orders appealed from were made were brought in connection with but ancillary to the suit in equity above mentioned, which was brought by the United States against the General Paper Company and a large number of other corporations.

This suit was commenced by a petition or bill of complaint filed in the Circuit Court in the Minnesota District under the provisions of the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies." The petition or bill of complaint alleges the incorporation of the General Paper Company and the other corporations joined with it as defendants, the business of said corporations other than the General Paper Company being stated to be the manufacture of news print, manilla, fibre and other papers at mills situated in the states of Wisconsin, Michigan and Minnesota, and selling and shipping the products of said mills to dealers, owners and managers of newspapers and other consumers in these and other states, to-wit: Illinois, Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Montana, Utah, Colorado, Kansas, Nebraska, Missouri, and other states west of the Mississippi River.

The remaining allegations of the bill of complaint are, in brief, as follows:

That prior to the month of May, 1900, when the defendant General Paper Company was organized, the other defendants, comprising substantially all of the manufacturers of paper in the territory above defined, were competing with each other in the sale and shipment of various kinds of paper in and throughout that territory;

That in or about the month of May, 1900, certain of the defendant corporations, in violation of the provisions of Sections 1 and 2 of the act of Congress above mentioned, entered into an

agreement, combination and conspiracy with each other to restrain the trade and commerce among the several states and to control, regulate and monopolize said trade and commerce and thereby, in conjunction and alliance with defendants who subsequently joined in the aforesaid agreement, combination and conspiracy, do now control, regulate and monopolize and restrain the trade and commerce not only in the manufacture of the products aforesaid, but also the distribution, sale and shipment thereof among and throughout the states aforesaid and all states west of the Mississippi River by means and in the manner following, to-wit:

That on or about the 26th day of May, 1900, the defendants last referred to caused to be organized under the laws of the state of Wisconsin a corporation styled General Paper Company with a capital stock of one hundred thousand dollars divided into one thousand shares and distributed among and owned and held by the defendants last named and those that subsequently joined in this combination and conspiracy in proportions based upon the average daily output of the mills of each defendant, and that this corporation, the General Paper Company, by its articles of incorporation, is authorized to become, as its principal business, the sales agent for any and all kinds of paper and paper products and any and all merchandise manufactured from paper or paper products by mills in the state of Wisconsin or elsewhere, and thereupon, in pursuance of a common plan and understanding, each of the aforesaid defendants entered into a contract and agreement with the General Paper Company making it the exclusive selling agent of its paper and paper products and conferring upon said General Paper Company absolute power to control and restrict the output of the mills of the respective defendants, fix the price of all papers sold throughout the states aforesaid and determine to whom and the terms and conditions upon which paper shall be sold and into what states and places it shall be shipped and what publishers and other customers each mill shall supply;

That after the formation of the General Paper Company the remaining defendants entered into and became parties to the aforesaid agreement, combination and conspiracy;

That each of the defendant companies for which the General Paper Company became in the manner aforementioned and is now the general selling agent agreed to and does pay to the General Paper Company for acting as its selling agent a certain percentage upon all sales of paper manufactured by it and that out of the amount received from this source the General Paper Company agreed to and does deduct its annual expenses for the

sale of the product and the balance is divided between the defendant companies as stockholders of the General Paper Company;

That by virtue of and through the instrumentality of the agreement, combination and conspiracy above described all competition in the manufacture, sale and distribution of the products aforesaid in the territory above mentioned has been suppressed and the price of all paper products greatly increased—that of news print paper in the territory aforesaid having been increased about fifty per cent., and that no dealers or newspapers or other consumers in said territory (with the exception of certain newspaper publishers in St. Louis and Chicago) can purchase any paper except directly or indirectly through the General Paper Company and then only upon prices and terms dictated by the latter.

The prayer of the petition is for an order adjudging and decreeing that the combination or conspiracy aforesaid is unlawful and that all acts done or to be done to carry it out are in derogation of the common rights of all the people of the United States and in violation of the act of Congress of July 2d, 1890, above referred to, and perpetually enjoining the defendants and their officers, directors, stockholders, agents and servants from doing any act in pursuance of or for the purpose of carrying out the same, and particularly that the General Paper Company be enjoined from acting as sales agent and fixing the price at which the paper of the various defendant corporations shall be sold and the persons, corporations and newspapers to which it shall be sold and the states into which it shall be shipped and sold, and enjoining each and every of the other defendants from continuing the said arrangement with the General Paper Company and from making the General Paper Company their exclusive selling agent and from authorizing it to restrict the output, fix the price and terms of sale of the product of each of their mills and manufactories or to dictate and determine the persons, corporations or newspapers to which it shall be sold and the states into which the same shall be shipped and sold.

There is also a prayer for general relief and a prayer for writs of subpoena directed to the several defendants, but waiving an answer under oath, and for a temporary restraining order pending the final hearing of the case. (Pp. 15-20, Transcript in Nos. 381, 382, 383, 384.)

The Manufacturers' Paper Company, a corporation organized under the laws of the state of New York, with its principal place of business in the city of Chicago, in the state of Illinois,

was made a party to the suit, but upon its filing a demurrer the suit was dismissed as to it.

It is alleged in the bill of complaint that all of the defendants are corporations organized under the laws of Wisconsin except four, viz., the Itasca Paper Company, Hennepin Paper Company and Northwest Paper Company, of Minnesota, and the Petoskey Fibre Paper Company, of Michigan.

The General Paper Company and all other defendants except the Manufacturers' Paper Company and the Rhinelander Paper Company filed a joint and several answer (Pp. 22-27, Transcript Nos. 381, 382, 383, 384) in which they admit their incorporation and places of business and the nature of the business in which each defendant was engaged, that is of manufacturing and selling paper and shipping the products to dealers and owners and managers of newspapers and other consumers in the territory mentioned in the bill of complaint.

They also admit that prior to the year 1900 and prior to the organization of the General Paper Company all of the other defendants were competing with each other in the sale and shipment of news print, manilla, fiber and other papers throughout the territory mentioned in the complaint, but allege that they have ever since continued to so compete and are now competing.

They deny that they comprise substantially all of the manufacturers of paper in the territory mentioned and allege on the contrary that there are now and have been since prior to the year 1900 a number of other manufacturers of paper in said territory competing with each other and with the defendants in this suit.

The defendants deny that in or about the month of May, 1900, or at any time those of them specially mentioned in the bill of complaint entered into agreement, combination or conspiracy with each other or into any agreement, combination or conspiracy whatever with any person or corporation whatever to restrain the trade or commerce among the several states or to restrain the trade or commerce among any states whatever or within any state whatever, or to control or monopolize said trade or commerce, and deny that they or any of them have ever at any time made, formed, or entered into any such agreement, combination or conspiracy, and deny that they or any of them do now control, monopolize or restrain the trade and commerce between any states whatever or within any state either in the manufacture of news print, manilla, fiber or other paper, or in the distribution, sale or shipment thereof among or throughout the states of the Union or among or between any states what-

ever or within the limits or borders of any state whatever by any means or in any manner whatever.

They admit the incorporation of the General Paper Company under the laws of the state of Wisconsin on or about the 26th day of May, 1900, with a capital stock of one hundred thousand dollars, divided into a thousand shares, which corporation by its articles of incorporation was authorized to become as its principal business the sales agent for any and all kinds of paper and paper products, and for any and all merchandise manufactured from paper or paper products by mills of the state of Wisconsin or elsewhere.

They allege that thereafter each defendant separately entered into a contract with the General Paper Company making the latter its exclusive selling agent for a definite period of years to sell certain specified grades or descriptions of paper manufactured by it.

They deny that any defendant mill by such contract or agreement or otherwise ever conferred upon the General Paper Company the power to control or restrict the output of the defendant mill or mills so contracting, or to fix the price of all or any papers sold throughout the states aforesaid, or to determine to whom or the prices or conditions upon which the papers manufactured by such defendant mills, or by any of them, should be sold, or into what states or places it should be shipped, or what publishers or other customers each mill should supply.

They allege that under such contracts it was made the duty of the General Paper Company to use its best efforts to keep the mill or mills owned or controlled by the other party to each of such contracts supplied with orders for paper at the best prices reasonably obtainable, and to submit all orders so obtained to the mill for which the same were taken for its approval or rejection, and to transmit all orders received by or offered to it for a particular mill to the mill selected by the customer for approval or rejection by such mill, to the end that each of such mills might be supplied with orders to the full extent of its capacity and the demands of the trade supplied in the most prompt and efficient manner possible.

They admit that each of the defendants for which the General Paper Company acts as sales agent has agreed to and does pay to the General Paper Company for acting as such agent a certain percentage upon all sales of paper manufactured by it, which percentage is fixed by the terms of the contract between the General Paper Company and each defendant.

They admit that the profits of the business of the General

Paper Company, after payment of its expenses, are divided between the stockholders of the General Paper Company in proportion to their holdings.

They deny each and every matter, thing, allegation and charge in the complaint contained not admitted as above, and further deny all and all manner of unlawful combination and confederacy.

The separate answer of the Rhinelander Paper Company (pp. 28-34, transcript in Nos. 381, 382, 383, 384) while somewhat longer than that put in by the other defendants, contains substantially the same denials. In addition it contains the allegation that the Rhinelander Paper Company is not a stockholder in the General Paper Company, and it denies knowledge or information of the specific details of the agreement between the General Paper Company and the defendant companies holding its stock as to the distribution and ownership of its stock and the payments of dividends.

Replications are also filed which are not included in the record.

The cause being at issue upon the petition or bill of complaint, answers and replications, and an examiner having been appointed by the Circuit Court of the Minnesota District to take testimony in the suit, a petition was filed in the Circuit Court of the Eastern District of Wisconsin asking for an order directing the issue of a subpoena duces tecum addressed to L. M. Alexander, individually and as secretary and treasurer of General Paper Company; George A. Whiting, individually and as vice-president of the same company, and W. Z. Stuart, individually and as second vice-president of the same company, directing them, and each of them, to attend before the examiner at a day named, then and there to be examined and to give evidence on the part of the petitioner, and to bring with them and produce at the time and place of examination the following books, papers and documents, to-wit:

"All written contracts or agreements made and entered into by and between the above named defendant, General Paper Company, and any or all of the other above named defendants in said cause, between the 1st day of May, 1900, and the present time, showing or in any way tending to show the terms and conditions upon which the said defendant, General Paper Company, sells or controls, or in any way deals in or has sold or controlled, or in any way dealt in, the product of the said other defendants or each or any of them, between the said 1st day of May, 1900, and the present time.

"All stock books, stock ledgers and any and all other books

of the said General Paper Company showing the ownership and distribution of the stock of said General Paper Company, from the time of its organization to the present time; and also all books or papers showing the manner and proportions in which the earnings of said defendant, General Paper Company, have from the time of its organization to the present time been divided and distributed.

"Any and all books, written agreements or papers relating to or in any way bearing upon the control of the defendant, General Paper Company, from the time of its organization to the present time, over the output of any or all of the other above named defendants, whether said control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said other defendants or any of them.

"Any and all books, papers, documents and correspondence in the possession or under control of the said witnesses, either individually or as officers of the defendant, General Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant, General Paper Company, and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of butcher's fibre.

"Any and all correspondence—letterpress copies, if any, of correspondence sent, as well as original letters or papers received—between the said defendant, General Paper Company, and each and all of the other defendants, showing the terms and conditions upon and under which the said defendant, General Paper Company, has from the time of its organization to the present time, sold or disposed of, and does sell or dispose of, the product of the said other defendants; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made. (pp. 3 and 4, transcript in Nos. 381, 382, 383, 384.)

A subpoena duces tecum was accordingly issued and served on the witnesses named. (pp. 468-470, transcript in Nos. 381, 382, 383, 384.) A second subpoena duces tecum was also issued and served upon L. M. Alexander, individually and as secretary and treasurer of General Paper Company, directing him, in ad-

dition, to bring and produce at the time and place of examination all written contracts or agreements made and entered into between the 1st day of May, 1900, and the present time, by and between the General Paper Company and any and all publishers of newspapers in certain named cities, including the cities of Milwaukee and Oshkosh, in Wisconsin, for the furnishing by said General Paper Company of roll print or news print paper to said publishers. (pp. 34-40, transcript in Nos. 381, 382, 383, 384.)

The witnesses above named, who are the appellants in numbers 381, 382 and 383, respectively, appeared before the examiner in obedience to said subpoenas, but on the advice of counsel refused to answer a number of questions, or to produce for inspection by counsel for the complainant and for introduction as evidence in said cause certain books, records, papers, reports and contracts called for by counsel for the complainant. The particular questions which the witnesses refused to answer and the particular demands for the production of books and documents to which the witnesses refused to respond appear scattered through the great mass of testimony printed on pages numbered from 138 to 462 of the record in numbers 381, 382, 383 and 384. It will not be necessary here to set out these questions and demands, which are sufficiently indicated in the assignments of errors, reproduced in the specifications of errors hereinafter contained.

Somewhat later in time than the issue of the subpoenas already mentioned a subpoena was issued out of the Circuit Court for the Eastern District of Wisconsin requiring E. T. Harmon to appear and testify as a witness upon said examination. (p. 2, transcript in No. 385.) This was a simple subpoena not a subpoena *duces tecum*. Harmon appeared before the examiner and, also acting upon advice of counsel, refused to answer certain questions and to produce certain papers, orders and acceptances called for by counsel for the complainant. The testimony in which these refusals appear is contained in pages numbered from 50 to 159 of the transcript of record in No. 385. The particular refusals are sufficiently indicated in the joint assignment of errors filed by Harmon and the General Paper Company and reproduced in the specifications of errors hereinafter printed at length.

Upon the refusal of Alexander, Whiting and Stuart to answer the questions asked and to produce the books and papers called for, a petition was filed in the Circuit Court of the Eastern District of Wisconsin which set out the prior proceedings and the refusals of the witnesses in detail, and contained very general

allegations in reference to the materiality of the evidence called for. Among these allegations are the following:

"That all of the questions which the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, have refused and do still refuse to answer are, as your petitioner verily believes, perfectly proper, competent and material to be answered, and all of the requests above referred to which the said witnesses, Alexander, Whiting and Stuart, have refused and do still refuse to comply with, are, as your petitioner verily believes, perfectly proper to be complied with in order that all of the material facts relating to the charge set out in the bill of complaint or petition may fully appear and be laid before the court for the proper determination of said cause."

"That the whole of said record of the meeting of the board of directors and stockholders of said General Paper Company is material, competent and proper evidence to establish the allegations of the petition herein, but that nevertheless the said Alexander, while so producing said book before the examiner, refused and declined so to do by counsel for the petitioner, and that said Alexander further refused to permit counsel for the petitioner to inspect the said book and read the entries therein contained, or offer the same in evidence, with the exception of certain isolated and fragmentary parts thereof, as appears by the testimony on file, and refused to permit the examiner to copy into the record many different pages of said record book which were formerly offered in evidence by the counsel for the petitioner and identified and initialed by the examiner when so offered."

The prayer of the petition was for an order requiring the said witnesses, Alexander, Whiting and Stuart, to appear before the judges of the Circuit Court for the Eastern District of Wisconsin to show cause why they should not be required to answer the questions and comply with the requests above referred to for the production of books, records, papers, reports and contracts, or, in the event of continued refusals, why the witnesses should not stand committed for contempt of court, and for such other and further relief as to the court might seem just and proper. (Pp. 41-47, transcript in Nos. 381, 382, 383, 384.)

The mass of testimony already taken was filed in the Circuit Court of the Wisconsin District in connection with the hearing upon this petition and the refusals complained of were indicated by reference to the pages of the testimony and the numbers of the questions on each page which the witnesses refused to answer. (Pp. 47-53, transcript in Nos. 381, 382, 384.)

Upon this petition an order to show cause was made by the Circuit Court of the Eastern District of Wisconsin, dated the first day of June, 1905, and commanding said witnesses, Alexander, Whiting and Stuart, to appear before the judge of said Circuit Court on the 6th day of June, 1905, then and there to show cause why they and each of them should not make full and proper answer to each of the questions referred to in said petition, and also fully comply with each and every of the requests mentioned in said petition, and also produce for the purposes of their examination for inspection by counsel for the petitioner, and for the purpose of being offered in evidence, the books, records, papers, reports and contracts particularly referred to in the petition and abide by such other and further order as the court might make. (P. 54, transcript in Nos. 381, 382, 383, 384.)

To this petition and order to show cause each of the witnesses, and the General Paper Company as well, put in an answer and afterwards amended answers.

The answer of the General Paper Company is contained on pages 80 to 84 of the last mentioned transcript and is as follows:

"Now comes The General Paper Company, one of the defendants in the above entitled matter, and asks leave to appear and file an answer to the order to show cause made by said court in the above entitled matter and to the petition heretofore filed in said matter by said complainant, upon which said order to show cause was made, in conjunction with the answer and objection made herein by the respondent witnesses and in affirmation of the objections and exceptions heretofore made and taken by or on behalf of said witnesses and this defendant, and for such answer it alleges and shows unto the court as follows:

"That George A. Whiting, W. Z. Stuart and L. M. Alexander, who have been ordered to show cause before this court why they and each of them should not make full and proper answer to certain questions referred to in said petition and schedules thereunto annexed, and comply with certain requests mentioned in said petition and schedules, and also produce for inspection by counsel for the petitioner and for the purpose of being offered in evidence in the cause referred to in said petition certain books, records, papers, reports and contracts, particularly referred to in the said petition and schedules, were respectively the first vice-president, second vice-president and secretary of this defendant, and said Whiting and said Alexander still are respectively first vice-president and secretary, and as such officers and not otherwise are the custodians of the books,

records, papers, reports and contracts mentioned in said order to show cause, and that the same are the books, records, papers, reports and contracts of this defendant and not of said officers and are subject to the control of this defendant, and that this defendant has objected and does object to the production of said books, records, papers, reports and contracts for inspection by counsel for said petitioner, or for the purpose of being offered in evidence in said cause. Said objection is based upon the following reasons:

"First. That the materiality of said books, records, papers, reports and contracts in the cause mentioned in said order to show cause now pending in the Circuit Court of the United States for the district of Minnesota in the third division in said district, has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of this defendant in no way bearing upon or touching the issues in said cause, which it would be highly injurious to the business interests of this defendant and the other defendants in said cause to make public, and this defendant submits that it ought not to be required through its officers or otherwise to disclose any portions of said books, records, papers, reports or contracts except on a proper showing that the same are material to said cause to establish some issue therein and a showing that the same are not privileged for the protection of this defendant.

"Second. That the purpose of said complainant in instituting said cause in said Circuit Court of the United States in and for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause for the inspection, production and introduction as evidence of said books, records, papers, reports and contracts is to establish and to compel this defendant to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the act of Congress entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, and the acts amendatory thereof or supplemental thereto, as is more fully set forth in said complainant's original petition or bill of complaint in said cause, and to subject this defendant to the penalties for such violations imposed by said act, and that to compel the production by this defendant through its said officers or otherwise of said books, records, papers, reports and contracts for

inspection and introduction as evidence in said cause would be contrary to the provisions of the fifth amendment to the Constitution of the United States, which provides that no person shall be compelled in any criminal case to be a witness against himself; and also contrary to the provisions of the fourth amendment to the Constitution of the United States, which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

"Third. That the alleged acts of this defendant complained of by the complainant in its said original petition and bill of complaint in said cause, and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this defendant to forfeiture of its charter and other penalties under said laws; that to compel it through its said officers or otherwise to produce said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

"Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause in said Circuit Court of the United States for the district of Minnesota in the third division of said district and in making the requests mentioned in said order to show cause is to obtain from said last mentioned court a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to this defendant and constitute a great part of its business, and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel the production by this defendant through its said officers or otherwise of said books, records, papers, reports and contracts for inspection and introduction as evidence in said cause for the purposes aforesaid would be contrary not only to the provisions of said fourth and said fifth amendment to the Constitution of the United States, but also contrary to the well es-

established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

"Further answering this defendant alleges and shows unto this court that all the matters concerning which the questions referred to in said petition and schedules thereto annexed were asked and which said officers refused to answer, as stated in said petition, except certain matters which occurred long prior to the organization of this defendant and have no relation whatever to the issues in the cause aforesaid, came to their knowledge exclusively as officers of this defendant in the conduct of matters entrusted to them as such officers by this defendant, and which this defendant, from the nature of the case, was compelled to entrust to them as such officers, and that this defendant has objected and does object to said questions and to the same being answered by said officers for reasons similar to those already set forth in reference to the production, inspection and introduction in evidence of the books, records, papers, reports and contracts above mentioned, that is to say:

"First. That the materiality of said questions in the cause above mentioned has not been established so as to authorize a court of equity to order them to be answered, and that the same are not material, relevant or competent evidence in said cause.

"Second. That the purpose of said complainant in instituting said cause and in asking said questions is to establish and to compel this defendant, through its said officers, to furnish to said complainant evidence tending to establish that it has been guilty of certain violations of the acts of Congress above referred to and to subject this defendant to the penalties for such violations imposed by said acts, and that to compel this defendant through its said officers to answer said questions would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

"Third. That the alleged acts of this defendant complained of by the complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause would be, if committed by this defendant, violations of the laws of the State of Wisconsin and would subject this defendant to forfeiture of its charter and other penalties under said laws; that to compel it through its said officers to answer the questions aforesaid would be to com-

pel it to furnish evidence tending to establish that it has been guilty of such acts, and subject it to the forfeiture of its charter and other penalties aforesaid, contrary to the provisions, hereinbefore referred to, of said fourth and said fifth amendment to the Constitution of the United States.

"Fourth. That in addition to the matters above set forth the purpose of the complainant in instituting said cause and in asking the questions mentioned in said order to show cause is to obtain a decree virtually annulling and enjoining this defendant from carrying out certain contracts and agreements now existing between it and the other defendants named in said cause on the alleged ground that said contracts and agreements were made and are in violation of the provisions of said acts of Congress; that said contracts and agreements are of great value to this defendant and constitute a great part of its business and that such virtual annulment of and injunction from carrying out said contracts and agreements would result in great injury, damage and loss to this defendant, and that to compel this defendant, through its said officers, to answer the questions aforesaid in aid of the purposes aforesaid would be contrary not only to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States, but also contrary to the well established rule of the common law as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions which may subject him either directly or eventually to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty.

"Wherefore this defendant asks that said order to show cause be dismissed." (Pp. 80-84, transcript in Nos. 381, 382, 383, 384.)

The answers of the individual witnesses were similar to that of the General Paper Company, but contained certain allegations bearing particularly upon their own situation as officers or stockholders not only of the General Paper Company, but also of certain other defendant companies joined with the General Paper Company as defendants in the suit pending in the Minnesota Circuit Court. Thus the answer of L. M. Alexander shows that he is the president of the John Edwards Manufacturing Company, one of the defendants, and the owner and holder of stock in said company of the par value of \$60,000.00; that he is secretary and treasurer of the Nekoosa Paper Company, another of the defendants, and the owner and holder of stock in said company of the par value of \$40,000.00; that he is secretary of Centralia Pulp & Water Power Company, an-

other of the defendants, and the owner and holder of stock in said company of the par value of \$25,000.00; and that he is also the owner and holder of stock of the General Paper Company of the par value of \$6,000.00, as well as the secretary of the General Paper Company; and that the General Paper Company, the John Edwards Manufacturing Company, the Nekoosa Paper Company and the Centralia Pulp and Water-Power Company have objected and do object to the production of the books, records, papers, reports and contracts called for by counsel for inspection and for the purpose of being offered in evidence for reasons similar to those set out in the answer of the General Paper Company.

The answer of said Alexander, in addition to the matters set out in the General Paper Company's answer, contains the following:

"Further answering, this respondent alleges that he ought not to be required to answer the questions or comply with the requests or produce for inspection by counsel for the complainant or for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts referred to in the order to show cause above mentioned and in the petition and schedules annexed to the petition upon which said order to show cause was made, not only for the reasons hereinabove set forth, but also for the following reasons, that is to say:

"First. That one of the purposes of said complainant in instituting said cause in said Circuit Court of the United States in and for the District of Minnesota in the Third Division of said District and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts aforesaid, is to establish and to compel this respondent to furnish to said complainant evidence tending to establish that he has been guilty of certain violations of the acts of Congress hereinbefore mentioned and referred to and to subject this respondent to the penalties for such violations imposed by said acts, and that to compel this respondent to answer said questions or comply with said requests or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

"Second. That the alleged acts of said General Paper Company and of the other defendants hereinabove named, to-wit: The John Edwards Manufacturing Company, The Nekoosa Paper Company, and Centralia Pulp & Water-Power Company, complained of by the complainant in its said original petition or bill of complaint in said cause and which said complainant is endeavoring to establish in said cause, would, if committed by said defendant companies, involve certain violations of the laws of the State of Wisconsin by this respondent and would subject him to penalties and forfeitures under said laws, and that to compel him to answer the questions or comply with the requests aforesaid or to produce for inspection or for the purpose of being offered in evidence in said cause the said books, records, papers, reports and contracts would be to compel this respondent to furnish evidence tending to establish that he has been guilty of such violations of the laws of the State of Wisconsin and to subject him to the penalties and forfeitures aforesaid, contrary to the provisions hereinbefore referred to of said fourth and said fifth amendment to the Constitution of the United States.

"Third. That one of the purposes of said complainant in instituting said cause in said Circuit Court of the United States in and for the District of Minnesota in the Third Division of said district and in seeking to require this respondent to answer the questions and comply with the requests and produce for inspection by counsel for the complainant and for the purpose of being offered in evidence in the cause above referred to the books, records, papers, reports and contracts above referred to is to establish and to compel this respondent to furnish to said complainant evidence tending to establish the allegations of the original petition or bill of complaint in said cause, which if established will result in subjecting this respondent to loss or detriment in the nature of a penalty or forfeiture, in that said The John Edwards Manufacturing Company, the Nekoosa Paper Company and Centralia Pulp & Water-Power Company, of each of which this respondent is a stockholder as aforesaid, as well as said defendant General Paper Company, of which he is also a stockholder, will be subjected under the laws of the State of Wisconsin to the forfeiture of their charters, resulting in the virtual forfeiture of the stock of this respondent in said defendant companies and to the loss and forfeiture to a large extent of the value of the interest of this respondent in said corporations of which he is a stockholder as aforesaid, and in that the contracts made through said General Paper Company as their sales agent by the other defendants above named, under

and pursuant to the agency contracts hereinbefore referred to between said General Paper Company and the other defendants above named will be virtually annulled and the property rights of said The John Edwards Manufacturing Company, the Nekoosa Paper Company and Centralia Pulp & Water-Power Company respectively in said contracts destroyed; that there are a large number of such contracts outstanding under which large sums of money, exceeding the sum of ten thousand dollars in each case, are due to each of said last named defendants, all of which, as this respondent is advised and believes, will be or may be forfeited and lost to said defendants last named and to this respondent as a stockholder therein in case the illegal combination alleged in said original petition or bill of complaint is established by the decree or judgment in said cause. And this respondent alleges that to compel him to answer the questions and comply with the requests and produce for inspection and for the purpose of being offered in evidence the books, records, papers, reports and contracts referred to in said order to show cause and the petition and schedules thereto annexed and which he has declined to answer and comply with or produce, if material to said cause would be contrary to the provisions of said fourth and said fifth amendment to the Constitution of the United States and also contrary to the well established rule of the common law and of equity jurisprudence, that no person will be compelled to discover any fact or matter which may subject him to forfeiture or penalty or anything in the nature of a forfeiture or penalty. (Pp. 89-91, Transcript in Nos. 381, 382, 383, 384.)

The answer of George A. Whiting, contained on pages 92-98 of the same record, is like that of Alexander except that his relations to the corporation defendants are as follows:

That he is the first vice president of the General Paper Company and owner and holder of stock therein of the par value of \$3,500.00; that he is the president of the Wisconsin River Paper & Pulp Company, one of the defendants, and the owner and holder of stock in said last named company of the par value of over \$100,000.00; and that the General Paper Company and the Wisconsin River Paper & Pulp Company object to the production of the books, records, papers, reports and contracts called for by the counsel for the complainant.

The answer of W. Z. Stuart, contained on pages 75-79 of said transcript, is similar to the answers of Alexander and Whiting except that his official relation to the General Paper Company was only until July 1, 1905.

There is an admission in the record that the stock in the

General Paper Company owned by these appellants was held by them for the benefit of other defendant corporations of which the appellants were officers or directors. (P. 301, Transcript in Nos. 381, 382, 383, 384.)

Argument having been had upon the petition and order to show cause and the answers of the witnesses and appellants, an order was made by the Circuit Court of the Wisconsin District on the 6th day of July, 1905, printed on pages 99 and 100 of said transcript, the substantial portions of which are as follows:

"Now therefore, after hearing counsel, it is ordered, adjudged and decreed:

"That the said witnesses, L. M. Alexander, George A. Whiting and W. Z. Stuart, be and they are hereby each of them directed to appear before Robert S. Taylor, special examiner in the above entitled action, at a time and place hereafter to be designated by said examiner, in the United States court house in the city of Milwaukee, Wisconsin, and there each of them directed to answer each and every of the questions put to them respectively by the counsel for said complainant, The United States of America, as set forth in the petition herein and the schedule thereunto annexed; and the said witnesses and each of them are hereby directed to produce before said examiner, at such time and place, the books, papers, records, documents, reports and contracts requested of them respectively, as more particularly appears by said petition and the schedule of refusals thereunto annexed, for the purposes of their respective examinations in said cause, and for use in evidence by the complainant, The United States of America, in said examination; and the complainant's counsel shall have the right, at such time and place and on any adjournment of said hearing before said examiner, to inspect the said books, papers, records, documents, reports and contracts and to introduce them and any of them in evidence in said cause; but the custody of said books, records, papers, documents, reports and contracts shall not be taken from said witnesses or their counsel except as may be necessary for such inspection and use in evidence, the permanent custody thereof to remain in said witnesses." (Pp. 99, 100, Transcript in Nos. 381, 382, 383, 384.)

Judge Seaman's opinion holds:

1. That the question of materiality of the evidence sought cannot be considered on this application.
2. That in respect of questions addressed to the personal knowledge of the witnesses, apart from the production of records and documents, the constitutional privilege is personal,

cannot be invoked in favor of the defendant corporations, and is removed by the amnesty provisions of the Anti-Trust Act.

3. That in respect of its records and documents the privilege inures to the General Paper Company, but is removed by the amnesty provisions above mentioned. (Pp. 62-64, Transcript in Nos. 381, 382, 383, 384.)

From this order the appeals in numbers 381, 382, 383, and 384 by Lewis M. Alexander, George A. Whiting, William Z. Stuart and General Paper Company, respectively, have been taken to this court.

In the Harmon matter similar proceedings in all respects were had. A petition was filed and order to show cause obtained which are printed on pages 3-7 and page 28 of the transcript in No. 385, and answers were put in by Harmon and the General Paper Company in all respects similar to the answers in the other cases. Harmon in his answer alleges that he was a director of the General Paper Company, a stockholder of Centralia Pulp & Water-Power Company, one of the defendants, owning and holding 160 shares of stock therein of the par value of \$16,000.00, and from January, 1901, until the 5th day of June, 1905, president and manager of Grand Rapids Pulp & Paper Company, one of said defendants, and alleges positively that the papers he was asked to produce before the examiner are not and were not at the time of his examination in his custody or under his control and that he then had and now has no power to produce them or to compel their production. (Pp. 28-35, Transcript in No. 385.)

The answer of the General Paper Company to the last mentioned petition and order to show cause is contained on pages 35-39 of the transcript in No. 385.

A similar order was entered upon this petition and order to show cause and the answers of Harmon and the General Paper Company on the 8th day of July, 1905; (pp. 39, 40, Transcript in No. 385) and from this order an appeal has been taken by E. T. Harmon and the General Paper Company which is No. 385 in this court.

The various petitions and orders for the allowance of the appeals, bonds on appeal, supersedeas and citations in all of these appeals are contained in the printed transcripts. So far as we know no question arises upon any of these and no further reference will be made to them.

The assignments of error filed by the various appellants are the same as the specifications of error hereinafter contained. The witnesses Alexander, Whiting and Stuart filed separate assignments of errors which, however, were all combined and

repeated in the assignment of errors filed by the General Paper Company in connection with its appeal. (Pp. 101-123, Transcript in Nos. 381, 382, 383, 384.)

In the Harmon matter Harmon and the General Paper Company joined in one assignment of errors which will hereinafter be found as a separate specification of errors. (Pp. 41-44, Transcript in No. 385.)

SPECIFICATIONS OF ERRORS.

1. In Appeals Nos. 381, 382, 383, 384.

(The references given below are to the Transcript in Nos. 381, 382, 383 and 384.)

1. The court erred in directing the witness Alexander to produce the record book of said General Paper Company for the purpose of having the whole of pages 33 to 37 thereof, containing the minutes of the annual stockholders' meeting in December, 1900, offered in evidence by counsel for the United States. (Trans. pp. 183, 184; marg. pp. 282, 283.)

2. The court erred in directing said Alexander after having read in evidence certain portions of the pages aforesaid to read the rest of the minutes of said stockholders' meeting which he had omitted to read. (Trans. p. 186; marg. pp. 286, 287.)

3. The court erred in directing said Alexander to permit counsel for the United States to examine the records of the stockholders' meeting held in December, 1900, in order to test the correctness of the witness's statements in reference to the business done at said meeting. (Trans. pp. 187, 189; marg. pp. 288, 289, 292.)

4. The court erred in directing said Alexander to permit the examiner to copy said pages 33 to 37 inclusive of the record book of said General Paper Company for the purpose of having them offered in evidence by counsel for the United States. (Trans. p. 189; marg. pp. 291, 292.)

5. The court erred in directing said Alexander to permit the examiner to initial pages 42 to 45 inclusive of said record book, being the minutes of the stockholders' meeting of December 10, 1901. (Trans. p. 199; marg. pp. 309, 310.)

6. The court erred in directing said Alexander to exhibit said record book to counsel for the United States for examination in order to verify the testimony of said witness in reference to business done at the annual stockholders' meeting held December 10, 1901. (Trans. p. 200; marg. pp. 310, 311.)

7. The court erred in directing said Alexander to read all of the minutes of said stockholders' meeting of December 10, 1901, including certain portions which he had previously omitted to read. (Trans. pp. 201, 202; marg. p. 314.)

8. The court erred in directing said Alexander to read the whole of the report of the committee appointed at the stockholders' meeting of December 10, 1901, including certain portions which the witness had omitted to read. (Trans. p. 206; marg. p. 322.)

9. The court erred in directing said Alexander to answer the question: When the law and the by-laws of your company require you to keep the possession of these books, why do you part with them? (Trans. pp. 206, 207; marg. p. 323.)

10. The court erred in directing said Alexander to state his recollection as to the balance of the report of the committee appointed at the stockholders meeting of December 10, 1901, which he had not read. (Trans. p. 211; marg. p. 331.)

11. The court erred in directing said Alexander to answer the question, whether he refused to read the balance of said report on the ground that the testimony would tend to incriminate him. (Trans. pp. 211, 212; marg. pp. 331-333.)

12. The court erred in directing said Alexander to permit counsel for the United States to examine said record book or to take the same for the purpose of examining it to see whether there was anything anywhere therein beside what the witness had stated referring to the report of the committee above referred to. (Trans. pp. 213, 214; marg. 335, 336.)

13. The court erred in directing said Alexander to answer the question whether there was a meeting of the board of directors of said General Paper Company held in January, 1902. (Trans. p. 298; marg. p. 478.)

14. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes contained in the record book of said General Paper Company of the meeting of the stockholders held December 8, 1903. (Trans. pp. 146, 150, 151; marg. pp. 228, 232, 233.)

15. The court erred in directing said Alexander to look and see whether any part of the record of the proceedings of the annual stockholders' meeting of December 8, 1903, other than

that which he had already read in evidence related in any way to any corporation defendant making the General Paper Company its sales agent or making a contract therefor. (Trans. pp. 273, 274; marg. pp. 438, 439.)

16. The court erred in directing said Alexander to answer the question whether the balance of said meeting of December 8, 1903, other than that read by the witness referred to any business between said General Paper Company and the constituent mills making the contracts with it as sales agent. (Trans. p. 275; marg. p. 440.)

17. The court erred in directing said Alexander to state the pages of said record book containing a record of said stockholders' meeting of December 8, 1903. (Trans. pp. 149, 150; marg. pp. 231, 231½, 232.)

18. The court erred in directing said Alexander to read in evidence the whole of page 70 of said record book relating to the meeting of the board of directors of said General Paper Company held December 8, 1903. (Trans. p. 147; marg. p. 229.)

19. The court erred in directing said Alexander to examine said record book for the purpose of ascertaining the numbers of the pages comprising the entire record of said meeting of the board of directors held December 8, 1903. (Trans. pp. 147, 148; marg. p. 229½.)

20. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the meeting of the directors of said General Paper Company held December 8, 1903. (Trans. p. 148; marg. p. 230.)

21. The court erred in directing said Alexander to produce for inspection by counsel for the United States and for the purpose of having the same offered in evidence the entire minutes of the stockholders' annual meeting of said General Paper Company held in December, 1904. (Trans. pp. 275, 276; marg. pp. 440-442.)

22. The court erred in directing said Alexander to produce the record book of said General Paper Company for the purpose of having offered in evidence the record of all meetings of the board of directors held during the year 1900. (Trans. pp. 288, 289; marg. pp. 462, 463.)

23. The court erred in directing said Alexander to answer the question: Do any of those meetings of the board of directors in 1900 refer to the business between any of the corporations having a contract with the General Paper Company and

the General Paper Company? (Trans. p. 289; marg. p. 463.) (This question was answered on p. 290.)

24. The court erred in directing said Alexander to state what the meetings of the board of directors held in 1900 referred to. (Trans. p. 290; marg. pp. 464, 465.)

25. The court erred in directing said Alexander to answer the questions: How many directors' meetings were there during 1900? And, Will you give the dates of those meetings? (Trans. p. 288; marg. p. 462.)

26. The court erred in directing said Alexander to comply with the request that he should look at the record book of said General Paper Company to see if there was a meeting of the board of directors of said company on the 18th of June, 1900. (Trans. pp. 171, 172; marg. pp. 262-264.)

27. The court erred in directing said Alexander to produce before the examiner the minutes of the meetings of the executive committee of said General Paper Company. (Trans. pp. 299, 300; marg. pp. 479, 480.)

28. The court erred in directing said Alexander to answer the questions: As secretary of the General Paper Company, are you the custodian of such records? (referring to the minutes referred to in the 27th assignment of error). When did Mr. Flanders get possession of said records? When did said records leave your possession? Have you had said records within your possession within the last thirty days? (Trans. p. 300; marg. pp. 480, 481. See also Trans. p. 153; marg. pp. 236-238.)

29. The court erred in directing said Alexander to state whether the treasurer's report made to the stockholders' meeting of December 8, 1903, contained the result of all the sales of paper made by the General Paper Company. (Trans. p. 274; marg. pp. 439, 440.)

30. The court erred in directing said Alexander to state what subject said report dealt with. (Trans. pp. 274, 275; marg. p. 440.)

31. The court erred in directing said Alexander to answer the questions: Do you know the total of sales each year by the General Paper Company in value? Do your treasurer's reports show the total sales in value each year by the General Paper Company? Have you any books under your control showing the total sales each year of the General Paper Company? (Trans. p. 296; marg. pp. 474, 475.)

32. The court erred in directing said Alexander to answer the question: Do your sales each year amount to in the neighbor-

hood of ten millions of dollars in value? (Trans. p. 296; marg. p. 475.)

33. The court erred in directing said Alexander to state whether the minutes of the stockholders of each year show that the general sales agent made a report. (Trans. p. 297; marg. p. 476.)

34. The court erred in directing said Alexander to answer the question: Does the directors' annual meeting held in December, 1900, show the presentation of a report of the sales manager? (Trans. p. 297; marg. p. 477.)

35. The court erred in directing said Alexander to answer the same question in reference to the annual directors' meetings of 1901, 1902, 1903 and 1904. (Trans. pp. 297, 298; marg. pp. 477, 478.)

36. The court erred in directing said Alexander to state: What dividends if any have been paid by the General Paper Company? (Trans. p. 296; marg. p. 475.)

37. The court erred in directing said Alexander to answer the question: Do your books show the dividends paid? (Trans. p. 297; marg. p. 476.)

38. The court erred in directing said Alexander to answer the questions: You know, do you, what dividends, if any, have been paid by the General Paper Company? and, If any dividends are paid, it is your duty to pay them? (Trans. p. 296; marg. pp. 475, 476.)

39. The court erred in directing said Alexander to produce the contracts between said General Paper Company and various publishers for the sale of news print paper. (Trans. p. 294; marg. p. 472.) (These include contracts with Milwaukee and Oshkosh publishers.)

40. The court erred in directing said Alexander to state whether the contracts just referred to (39th assignment of error) are usually on a printed blank. (Trans. p. 295; marg. pp. 472, 473.)

41. The court erred in directing said Alexander to answer the question: Do you know where that form of contract was procured—whether it was taken from the form of contract used by the International Paper Company or not? (Trans. p. 295; marg. p. 473.)

42. The court erred in directing said Alexander to answer the question: During the existence of the General Paper Company has there been a pool among these mills in connection with the General Paper Company covering fibre paper or butchers' fibre paper? (Trans. p. 290; marg. p. 465.)

43. The court erred in directing said Alexander to answer the question: Is it not a fact that certain of the mills which made butchers' fibre were compensated by the other mills and that the other mills made payments through E. A. Edmonds, who distributed the money to the mills making butchers' fibre? (Trans. p. 290; marg. p. 466.)

44. The court erred in directing said Alexander to answer the question: Is there not less profit in the manufacture of butchers' fibre than in any other paper? (Trans. p. 291; marg. p. 466.)

45. The court erred in directing said Alexander to answer the question whether the Nekoosa Paper Company was compensated for making butchers' fibre by the other companies in this combination. (Trans. p. 291; marg. p. 467.)

46. The court erred in directing said Alexander to answer the question, whether or not Mr. E. A. Edmonds, formerly of the Falls Manufacturing Company and now of the Rhinelander Paper Company, was the clearing house through which any payments were made to compensate any mill for making butchers' fibre? (Trans. p. 291; marg. p. 467.)

47. The court erred in directing said Alexander to answer the question, whether any of the defendants made such payments through E. A. Edmonds. (Trans. p. 292; marg. p. 468.)

48. The court erred in directing said Alexander to answer the question: Do you know of your own knowledge that the General Paper Company or some officer of the General Paper Company did not send checks of the separate mills to Mr. E. A. Edmonds, who sent the checks or divided up the money between the mills making butchers' fibre? (Trans. p. 292; marg. p. 468.)

49. The court erred in directing said Alexander to state whether or not any of the mills not making butchers' fibre sent checks through the General Paper Company or any officer of the General Paper Company to E. A. Edmonds for such purpose. (Trans. p. 292; marg. p. 468.)

50. The court erred in directing said Alexander to state whether the General Paper Company or any officer of said company sent the checks or the money of any of the constituent companies having contracts with it to Mr. Edmonds for the purpose of compensating the mills making butchers' fibre. (Trans. p. 292; marg. pp. 468, 469.)

51. The court erred in directing said Alexander to state whether settlements between the mills through the General Paper Company or any officer of the General Paper Company were made once in three months to compensate the mills making butchers' fibre paper. (Trans. p. 292; marg. p. 469.)

52. The court erred in directing said Alexander to state whether there was any pool between the defendant companies since the organization of the General Paper Company on any other grades of paper. (Trans. pp. 292, 293; marg. p. 469.)

53. The court erred in directing said Alexander to answer the question: Do the books which are kept under your direction or by you show the payment by any of the defendant mills since the organization of the General Paper Company to any of the other defendant mills of any sum of money to compensate any of the defendant mills making butchers' fibre? (Trans. 293; marg. p. 470.)

54. The court erred in directing said Alexander to state whether he had any discussion about the Manufacturers' Paper Company acting as sales agent for all these defendant mills, or a part of them, at some meeting in Chicago, which may have been prior to May 26, 1900, at Mr. Brocklebank's office, at which Mr. Garrison and Mr. Nash may have been present. (Trans. p. 247; marg. p. 391.)

55. The court erred in directing said Alexander to answer the question: Well, you recollect such meeting now, do you? (Trans. p. 247; marg. p. 391.)

56. The court erred in directing said Alexander to answer the question: Now, I ask if you did not attend a meeting at the Grand Pacific hotel in Chicago, at which you were present, Mr. Brocklebank, Mr. Garrison, Mr. Nash, Mr. Whiting, Mr. Kimberly, Mr. Stuart and perhaps others, at which meeting a discussion was had and a proposition made to the Manufacturers' Paper Company to act as selling agent. (Trans. pp. 247, 248; marg. p. 391.)

57. The court erred in directing said Alexander to answer the question: Do you recollect any such meeting? (Trans. p. 248; marg. p. 392.)

58. The court erred in directing said Alexander to answer the question: Did you make a statement to anyone after that meeting of what occurred at that meeting (referring to the meeting described in the 56th assignment of error)? (Trans. p. 248; marg. p. 392.)

59. The court erred in directing said Alexander to answer the following question: Did you not attend a meeting in Chicago at the Grand Pacific hotel, at which you were present, Mr. Brocklebank of the Manufacturers Paper Company, Mr. J. A. Kimberly, Mr. T. E. Nash, Mr. F. Garrison, Mr. George A. Whiting, Mr. A. N. Pride, Mr. John Van Nortwick, Mr. Charles Babcock—all of whom except Mr. Brocklebank were afterwards directors or officers of the General Paper Company—at which

meeting you discussed the plans for organizing or for procuring the General Paper Company to act as the exclusive sales agent of these defendants or some of them, the Manufacturers Paper Company I mean, and at which you afterwards discussed the plans of organizing the General Paper Company? I mean this meeting held sometime in March, 1900. (Trans. p. 249; marg. pp. 393, 394.)

60. The court erred in directing said Alexander to answer the question: At any meeting held in January, 1902, or about that time, was the subject of making any arrangement with the Manufacturers Paper Company discussed and is there any record of any such discussion? (Trans. p. 298; marg. pp. 478, 479.)

61. The court erred in directing said Alexander to answer the question: Do you know whether at any time the subject was discussed at the board of directors' meeting as to making any arrangement with the Manufacturers Paper Company about the sale of paper in the territory west of Chicago? (Trans. p. 298; marg. p. 479.)

62. The court erred in directing said Alexander to state whether he gave out a statement of what occurred at a directors' meeting of the General Paper Company held in Appleton, Wisconsin, on June 18th, 1900, to the trade paper. (Trans. pp. 236, 237; marg. p. 375.)

63. The court erred in directing said Alexander to state whether at the city of Appleton, after the meeting of the board of directors on June 18, 1900, he stated to a reporter of the trade journal in words or in substance that the contracts closing the matter were all ready and the only point to be settled was as to who was to sign them. Finally it was settled that all the mills in the state making print, manilla and fibre would sign except the Marinette & Menominee Paper Company, and whether he then gave a list of the companies who had signified their willingness to enter into contracts. (Trans. pp. 237, 238; marg. pp. 376, 377.)

64. The court erred in directing said Alexander to answer the question: Did you make that statement during the meeting of the board? (referring to the question in the 63d assignment of error). (Trans. p. 238; marg. p. 377.)

65. The court erred in directing said Alexander to answer the question: Can you, in a general way, state what the principal product of the defendant mills is, whether it is news print paper or other classes? (Trans. 295, 296; marg. p. 474.)

66. The court erred in directing the witness George A. Whiting to answer the question: Did you have any meeting at Chicago where you discussed the subject of making the Manufac-

turers' Paper Company the selling agent of these defendants or any of them? (Trans. p. 307; marg. p. 493.)

67. The court erred in directing said Whiting to state whether he had ever had any business with Mr. J. C. Brocklebank. (Trans. p. 308; marg. p. 494.)

68. The court erred in directing said Whiting to answer the question: Was this (the organization of a company for the purpose of selling paper) finally agreed on between you gentlemen before the final organization of the company? (Trans. p. 310; marg. p. 497.)

69. The court erred in directing said Whiting to answer the question: Did you have any idea prior to May 26th, 1900, what proportion of the stock your company was going to get? (Trans. pp. 315, 316; marg. p. 505.)

70. The court erred in directing said Whiting to answer the question: Prior to the time you subscribed for the stock for your mill, did you have any understanding with the other gentlemen who went into this organization as to the amount of stock which should be given to each one of you? (Trans. p. 316; marg. p. 506.)

71. The court erred in directing said Whiting to answer the question: Did you mean to say that you, as one of the principal men, caused the General Paper Company to be organized to handle more than ten million dollars of products per year and that you do not recollect the plan on which it was organized? (Trans. p. 336; marg. p. 536.)

72. The court erred in directing said Whiting to answer the question: You have no recollection of an understanding between you gentlemen as to the basis of the division of the stock at all? (Trans. pp. 336, 337; marg. pp. 536, 537.)

73. The court erred in directing said Whiting to answer the question: You have no recollection of meeting with these gentlemen and agreeing on the form of a contract? (Trans. p. 337; marg. p. 537.) (This question was answered by the witness.)

74. The court erred in directing said Whiting to answer the question: You remember that a contract was adopted at some meeting, do you? (Trans. p. 337; marg. pp. 537, 538.)

75. The court erred in directing said Whiting to answer the question: Did you ever have any talk with Mr. Bossard about making the General Paper Company its selling agent? (Trans. p. 327; marg. p. 523.)

76. The court erred in directing said Whiting to answer the question: Did you on or about February 5, 1902, which is the date—which the Itasca Paper Company entered into a contract with the General Paper Company making it its exclusive selling

agent for certain grades of paper, have any conversation with Mr. Bossard of that company about entering into that contract with the General Paper Company? (Trans. p. 327; marg. p. 523.)

77. The court erred in directing said Whiting to state whether Mr. H. C. McNair declined to take stock in the General Paper Company at a talk had between the witness and Mr. McNair at Appleton about entering into a contract with the General Paper Company before the organization of the General Paper Company. (Trans. p. 328; marg. pp. 524, 525.)

78. The court erred in directing said Whiting to state what conversation he had with Mr. McNair in Chicago one day either in the lobby of the the General Paper Company or at some hotel. (Trans. p. 329; marg. pp. 526, 527.)

79. The court erred in directing said Whiting to answer the question: Did you have any conversation with him (McNair) about the Northwest Paper Company entering into a contract with the General Paper Company? (Trans. p. 329, 330; marg. p. 527.)

80. The court erred in directing said Whiting to answer the question: How do you know he (McNair) had concluded to go in? (meaning into the General Paper Company.) (Trans. p. 330; marg. p. 527.)

81. The court erred in directing said Whiting to state whether he had any conversation with McNair in reference to the Northwest Paper Company making the General Paper Company its selling agent. (Trans. p. 330; marg. p. 528.)

82. The court erred in directing said Whiting to answer the question: State whether you did or did not have any conversation with Mr. McNair in which you discussed with him the subject of the Northwest Paper Company making the General Paper Company its general agent prior to the time it went into the combination. (Trans. p. 330; marg. p. 528.)

83. The court erred in directing said Whiting to answer the question: Did you have any conversation with Mr. McNair prior to the time his company entered into this contract with the General Paper Company making it the exclusive selling agent—about his company making any such contract? (Trans. pp. 330, 331; marg. p. 528.)

84. The court erred in directing said Whiting to answer the question: Do you not know from your own knowledge that for nearly two years the Northwest Paper Company refused to make the General Paper Company its selling agent? (Trans. p. 331; marg. p. 529.)

85. The court erred in directing said Whiting to state whether

at the last annual meeting of the General Paper Company held in December, 1904, he heard the subject discussed as to the Petoskey Fibre Paper Company renewing its contract. (Trans. p. 335; marg. p. 534.)

86. The court erred in directing said Whiting to answer the question: Was there any discussion at that meeting about dropping Mr. Cheeseman from the board of directors because his company had not entered into a contract renewing its contract making the General Paper Company its selling agent. (Trans. p. 335; marg. pp. 534, 535.)

87. The court erred in directing said Whiting to answer the question: After the organization of the General Paper Company did you have any conversation with any of the officers of the International Paper Company about keeping out of this territory west of Chicago? (Trans. p. 345; marg. p. 550.)

88. The court erred in directing said Whiting to answer the question: Did you ever hear of a pool on butchers' fibre between any of the defendant mills? (Trans. pp. 333, 334; marg. p. 533.)

89. The court erred in directing said Whiting to state whether he never heard of an arrangement whereby certain of the defendant mills made payments through the General Paper Company or some officer of the General Paper Company to certain other of the defendant mills which manufactured butchers' fibre. (Trans. p. 334; marg. p. 534.)

90. The court erred in directing said Whiting to answer the question: Did you ever hear of such an arrangement between any of these parties? (referring to the arrangement mentioned in the 89th assignment of error). (Trans. p. 334; marg. p. 534.)

91. The court erred in directing the witness W. Z. Stuart to answer the question: What *has* been the yearly sales of the General Paper Company for these mills for which you are the exclusive selling agent under these contracts? (Trans. pp. 361, 362; marg. p. 574.)

92. The court erred in directing said Stuart to answer the question: Do your books of account show the amount of yearly sales by the General Paper Company as the selling agent of these different companies? (Trans. p. 362; marg. pp. 574, 575.)

93. The court erred in directing said Stuart to answer the question: Do you keep books of account at your office in Chicago which show the amount of paper in weight and in dollars and cents sold for each mill in each year? (Trans. p. 362; marg. p. 575.)

94. The court erred in directing said Stuart to answer the question: Do you know without referring to those books about

the yearly sales for all these defendant mills? (Trans. p. 362; marg. p. 575.)

95. The court erred in directing said Stuart to answer the question: What amount of paper do you sell for each, or did you sell for each of these defendant mills in the year 1900? (Trans. p. 362; marg. p. 575.)

96. The court erred in directing said Stuart to answer the question: What were the gross sales for all the mills for which your company is the exclusive agent under the contracts in evidence for the year 1900? (Trans. p. 362; marg. p. 575.)

97. The court erred in directing said Stuart to answer the question: What was the amount of sales in dollars and cents made for each mill for which the General Paper Company was the exclusive selling agent in the years 1901, 1902, 1903 and 1904? (Trans. p. 362; marg. p. 576.)

98. The court erred in directing said Stuart to answer the question: Do you know what the amount is? (referring to the sales referred to in the 97th assignment of error). (Trans. p. 362; marg. p. 576.)

99. The court erred in directing said Stuart to answer the question: What was the gross amount of sales in dollars for all the companies during each year which I have referred to? (Trans. p. 363; marg. p. 576.)

100. The court erred in directing said Stuart to answer the question: Do you know what amount of dividends have been paid by the General Paper Company each year? (Trans. p. 363; marg. p. 576.)

101. The court erred in directing said Stuart to answer the question: Will you state the amount of dividends paid by the General Paper Company each year? (Trans. p. 363; marg. p. 576.)

102. The court erred in directing said Stuart to answer the question: Do your books show the gross receipts from commissions for the sale of paper? (Trans. p. 363; marg. pp. 576, 577.)

103. The court erred in directing said Stuart to answer the question: Do you know the gross amount of commissions received each year for the sale of paper under the contracts in evidence? (Trans. p. 363; marg. p. 577.)

104. The court erred in directing said Stuart to answer the question: Do you keep books showing the total gross receipts from commissions from each one of these defendant companies for the sale of paper, the expenses of the business and the net profits? (Trans. p. 363; marg. p. 577.)

105. The court erred in directing said Stuart to answer the question: Do you know that of your own knowledge? (referring

to the matters mentioned in the 104th assignment of error). (Trans. p. 363; marg. p. 577.)

106. The court erred in directing said Stuart to answer the question: Do you keep books of account showing the price of paper received by each of the defendant companies and sold by your company? (Trans. p. 363; marg. p. 577.)

107. The court erred in directing said L. M. Alexander, George A. Whiting and W. Z. Stuart, and each of them, to appear before Robert S. Taylor, special examiner in the above entitled action, and answer each and every of the questions put to them respectively by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedules thereunto annexed.

108. The court erred in directing said Alexander, Whiting and Stuart, and each of them, to produce before said examiner the books, papers, records, documents, reports and contracts requested of them respectively as set forth in said petition and schedules for the purposes of their respective examinations in said cause and for use in evidence by the complainant in said examination.

109. The court erred in ordering that said complainant's counsel shall have the right to inspect the said books, records, papers, documents, reports and contracts.

110. The court erred in ordering that said complainant's counsel shall have the right to introduce the said books, papers, records, documents, reports and contracts and any of them in evidence in said cause.

2. Specifications of Errors in Appeal No. 385.

(The references given below are to the Transcript in No. 385.)

1. The court erred in directing said E. T. Harmon to answer the question: Did the Grand Rapids Pulp & Paper Company have any arrangement with the General Paper Company during the year 1904 with reference to a fixed or flat price for hanging paper sold during that year as between the two companies? (Trans. p. 150; marg. p. 190.)

2. The court erred in directing said Harmon to answer the question: Was there any arrangement between the Grand Rapids Pulp & Paper Company was to be credited for hanging with relation to the amount or price for which the Grand Rapids Pulp & Paper Company was to be credited for hanging paper per hundred pounds sold during the year 1904? (Trans. p. 152; marg. p. 192.)

3. The court erred in directing said Harmon to answer the question: Was there not a stated or fixed price for hanging paper at which the Grand Rapids Pulp & Paper Company was to be credited in the first instance as between the General Paper Company and the Grand Rapids Pulp & Paper Company? (Trans. p. 152; marg. pp. 192, 193.)

4. The court erred in directing said Harmon to answer the question: Was there not an arrangement between the General Paper Company and the Grand Rapids Pulp & Paper Company whereby the mill was to be credited with a fixed or flat price for hanging paper during the year 1904 and was to receive subsequently its proportion of the amount over and above that fixed price at which the General Paper Company might sell that paper? (Trans. p. 152; marg. p. 193.)

5. The court erred in directing said Harmon to answer the question: Was not the surplus or excess above a certain flat or fixed price for hanging paper sold by the General Paper Company or through the General Paper Company divided up among the mills making hanging paper in proportion to their output? (Trans. p. 152; marg. p. 193.)

6. The court erred in directing said Harmon to answer the same question with reference to the years 1903, 1902, 1901 and 1900. (Trans. pp. 152, 153; marg. pp. 193, 194.)

7. The court erred in directing said Harmon to answer the question: Did not all of the mills manufacturing hanging paper receive a credit of a certain fixed amount or price per hundred pounds for such paper from the General Paper Company and receive a dividend comprising its share of the surplus over and above that flat price at which the General Paper Company might sell the product? (Trans. p. 153; marg. p. 194.)

8. The court erred in directing said Harmon to answer the question: Did not each mill making the General Paper Company its selling agent receive from the General Paper Company a fixed price for its product—a price equal to all of the mills manufacturing the grade of paper in question, and subsequently receive a proportion of all that might be realized by the General Paper Company through the sale of that paper above that price? (Trans. p. 153; marg. pp. 194, 195.)

9. The court erred in directing said Harmon to answer the question: Was not all of the balance realized above a fixed price for paper distributed among the mills in the General Paper Company in the proportion to their output? (Trans. p. 153; marg. p. 195.)

10. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take from the

constituent mills the paper manufactured by them at a fixed or stated price and then was not the balance realized above that price through the sale of the paper distributed among the constituent mills in proportion to their output so as to equalize the prices as among the constituent mills? (Trans. pp. 153, 154; marg. p. 195.)

11. The court erred in directing said Harmon to answer the question: By the term "constituent mills" I refer to mills which have made General Paper Company their exclusive selling agent. Taking the term in that sense, I repeat the question. (Trans. p. 154; marg. p. 196.)

12. The court erred in directing said Harmon to answer the question: I ask you the same question as the last question with particular reference to news print paper. (Trans. p. 154; marg. p. 196.)

13. The court erred in directing said Harmon to answer the question: Was not the news print paper manufactured by the Grand Rapids Pulp & Paper Company sold through the General Paper Company or to the General Paper Company at a fixed or stated price per hundred pounds? (Trans. p. 155; marg. p. 197.)

14. The court erred in directing said Harmon to answer the question: State whether or not the General Paper Company did not take the news print paper manufactured by the Grand Rapids Pulp & Paper Company at a fixed and stated price. (Trans. p. 155; marg. p. 197.)

15. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take the news print paper manufactured by the mills of which it was the exclusive selling agent at a fixed and stated price? (Trans. p. 155; marg. p. 198.)

16. The court erred in directing said Harmon to answer the question: Did not the General Paper Company take news print paper manufactured by the mills of which it was the exclusive selling agent at a stated price and was not the balance realized from the sale of such paper over and above that stated price divided among those mills making news print paper in proportion to their output so as to equalize the price among such mills? (Trans. pp. 155, 156; marg. p. 198.)

17. The court erred in directing said Harmon to answer the question: I ask you that question with particular reference to the year 1900? (Trans. p. 156; marg. 198.)

18. The court erred in directing said Harmon to answer the same question with reference to the years 1901, 1902, 1903, 1904 and 1905. (Trans. p. 156; marg. pp. 198, 199.)

19. The court erred in directing said Harmon to answer the question: Do the books of the Grand Rapids Pulp & Paper Company show whether or not the paper, both hanging and news print, manufactured by that company was disposed of through the General Paper Company at a fixed or stated price? (Trans. p. 156; marg. p. 192.)

20. The court erred in directing said Harmon to answer the question: Do the books of the Grand Rapids Pulp & Paper Company show or give any information as to whether or not the Grand Rapids Pulp & Paper Company received from or through the General Paper Company, either directly or indirectly, any credit representing a proportion received by the Grand Rapids Pulp & Paper Company of the balance realized over and above a fixed and stated price for paper manufactured by that company? (Trans. p. 156; marg. pp. 199, 200.)

21. The court erred in directing said Harmon to answer the question: State whether or not there was any arrangement or understanding among the mills manufacturing hanging paper or among those mills and the General Paper Company whereby the prices which each mill should receive for hanging paper were equalized. (Trans. p. 157; marg. p. 201.)

22. The court erred in directing said Harmon to answer the question: I ask you the same question with reference particularly to news print paper. (Trans. p. 157; marg. p. 201.)

23. The court erred in directing said Harmon to produce every order secured by the General Paper Company and filled by the Centralia Pulp & Water-Power Company and the acceptance thereof by the latter company so that the same could be submitted to the inspection of counsel for the United States and put in evidence by him. (Trans. p. 158; marg. p. 202.)

24. The court erred in directing said Harmon to state whether he had given all the excuses he desired to give for not answering the question whether he would produce the orders just referred to before the examiner so that counsel for the United States might put them in evidence. (Trans. p. 158; marg. pp. 202, 202½.)

25. The court erred in directing said Harmon to appear before Robert S. Taylor, special examiner in the above entitled action, and answer each and every of the questions put to him by the counsel for said complainant as set forth in the petition in the above entitled matter and in the schedule thereunto annexed.

26. The court erred in directing said Harmon to produce before said examiner the papers, orders and acceptances requested by counsel for said complainant as set forth in said petition

and schedule for the purposes of his examination in said cause and for use in evidence by the complainant in said examination.

27. The court erred in ordering that said complainant's counsel shall have the right to inspect the said papers, orders and acceptances.

28. The court erred in ordering that said complainant's counsel shall have the right to introduce the said papers, orders and acceptances and any of them in evidence in said cause.

ANALYSIS AND SUMMARY OF SPECIFICATIONS OF ERRORS.

Before proceeding to the argument on the questions of law involved, it may be helpful to present to the court a brief summary of the evidence, documentary and oral, required of the witnesses by the orders appealed from, and to group in classes the specifications of errors according to the subjects to which they relate.

The questions which the witnesses refused to answer fall naturally into two classes according as they call for documentary or oral evidence. These may again be subdivided according to the subject to which they relate. The specifications of error, based as they are upon orders directing answers to questions under these various groups, may be arranged under the same subdivisions.

(a) Under the head of documentary evidence the questions and specifications of error may be grouped as follows:

Questions put to Mr. Alexander requesting him to produce the record book of the General Paper Company for the purpose of having the whole of pages 33 to 37 thereof, containing the minutes of the annual stockholders' meeting of December, 1900, offered in evidence by counsel for the United States. After having read certain portions of these minutes bearing upon the election of directors, the names of the stockholders voting, and the amount of stock voted, the witness was requested to read the balance, without any statement being made of the purpose for which it was to be read. The witness was also requested to permit counsel for the United States to examine the whole of said minutes in order to test the correctness of the witness's statements in reference to the business done at said meeting. (Specifications Nos. 1-4 in Appeals Nos. 381, 382, 383, 384.)

Similar requests in reference to the entire minutes of the stockholders' meeting of December 10, 1901. (Specifications Nos. 5-7.)

Similar requests in regard to the report of a committee appointed at the stockholders' meeting of December 10, 1901. (Specifications Nos. 8-12.)

Similar requests as to the minutes of the stockholders' meeting of December 8, 1903. (Specifications Nos. 14-17.)

Similar requests in reference to the minutes of the directors' meeting of December 8, 1903. (Specifications Nos. 18-20.)

Similar requests in regard to the minutes of the stockholders' annual meeting of December, 1904. (Specification No. 21.)

Similar requests in reference to the record of all meetings of the board of directors held during the year 1900. (Specifications Nos. 22-26.)

Similar requests in reference to the minutes of the meetings of the executive committee. (Specifications Nos. 27-28.)

Requests calling for statements in reference to contents of treasurer's reports in reference to the total sales in value made each year by the General Paper Company. (Specifications Nos. 29-32.)

Questions in reference to the reports of the general sales agent made at the stockholders' and directors' annual meetings. (Specifications Nos. 33-35.)

Questions calling for a statement of the amount of dividends paid by the General Paper Company. (Specifications Nos. 36-38.)

Questions calling for the production of the contracts between the General Paper Company and various publishers, including Wisconsin publishers, for the sale of news print paper and in reference to the form of such contracts. (Specifications Nos. 39-41.)

Mr. Stuart was asked whether the books of account showed the amount of yearly sales by the General Paper Company as the selling agent of the different defendants. (Specifications Nos. 92, 93.)

He was also asked to state whether the books showed the General Paper Company's gross receipts from commissions for the sale of paper. (Specifications No. 102, 104.)

He was also asked whether he kept books of account showing the price of paper received by each of the defendant companies and sold by the General Paper Company. (Specification No. 106.)

All of the foregoing objections are included in a comprehensive way in specifications Nos. 108-110.

Mr. Harmon was asked to state whether the books of the Grand Rapids Pulp & Paper Company showed a fixed or stated price for paper manufactured by it and disposed of through the General Paper Company and whether said books show whether the Grand Rapids Pulp & Paper Company received through the General Paper Company any credit of a balance realized over and above a fixed and stated price for paper manufactured by that company. (Specifications Nos. 19, 20, in appeal No. 385.)

Mr. Harmon was also asked to produce for inspection and to be offered in evidence by counsel for the United States all orders secured by the General Paper Company and filled by the Centralia Pulp & Water-Power Company and the acceptance thereof by the latter company. (Specification No. 23.)

All the foregoing questions calling for documentary evidence were objected to by counsel for the defendant corporations as irrelevant, incompetent and immaterial.

They were also objected to by the witnesses in their own behalf and in behalf of the defendant companies of which they were officers, and by the General Paper Company, as calling for evidence which the witnesses and the defendant companies were privileged from furnishing to the Government under the immunities contained in the fourth and fifth amendments to the federal constitution.

The objection on the ground of immateriality was renewed and continually repeated throughout the examinations of the witnesses. As one method of emphasizing the objection, it appears from the record in a number of instances where certain portions of the record books were submitted to examination by counsel for the plaintiff that other portions of the same book were covered up by sheets of paper so as not to come under the inspection of counsel. (Pp. 174, 211, 262, 264, transcript in Nos. 381, 382, 383 and 384.)

The objection was also put in the general form of an objection to a "fishing examination." (Pp. 150, 184, 200, 275 of the same transcript.)

The objection based upon the privilege of immunity from self-incrimination under the federal constitution is set up in the answers of the several witnesses and of the General Paper Company filed in the circuit court in the proceedings in which these appeals are taken. These answers have already been set out in the preceding statement of facts.

(b) Under the head of oral evidence the questions and specifications of error may be grouped as follows:

Questions in reference to preliminary conversations, understandings or agreements prior to the organization of the General Paper Company in May, 1900. (Specifications Nos. 54-64; 66, 67; 68-74; and 77-84; transcript in Nos. 381, 382, 383, 384.)

Questions referring to subsequent negotiations had with the object of extending the business relations of the General Paper Company with corporations not then having contract relations with it. (Specifications Nos. 13, 60; 75, 76; 85, 86, 87, in same transcript.)

Questions calling for information as to the total annual sales of the General Paper Company. (Specifications Nos. 31, 32; 91-99.)

Questions calling for a statement of the dividends declared by the General Paper Company. (Specifications Nos. 36, 38; 100, 101.)

Questions as to commissions received by the General Paper Company on sales made by it as agent of the other defendants. (Specifications Nos. 102-105.)

Questions in reference to a pool among the defendant mills in connection with the General Paper Company covering fiber paper or butchers' fiber paper. (Specifications Nos. 42-53; 88-99.) It may be proper to state in this connection that the original bill of complaint contains no allegations or charges of such a pool.

Questions asked of Mr. Harmon having for their object the establishment of the charge of an agreement between the General Paper Company and the other defendants whereby each mill was to be credited by the General Paper Company with a fixed or flat price for its products and should subsequently receive a proportion of any surplus or excess above that price obtained by the General Paper Company. (Specifications Nos. 1-22 in Harmon's Appeal No. 385.)

Various questions connected with those relating to documentary evidence and calling for oral testimony of no importance except as so connected do not seem to require separate reference.

Certain other questions objected to as calling for legal conclusions and therefore irrelevant, incompetent and immaterial, are included in Specifications Nos. 9, 11 and 28 in Appeals Nos. 381, 382, 383 and 384 and Specification No. 24 in Appeal No. 385.

All the foregoing questions calling for oral evidence were objected to by counsel for the defendant corporations as irrelevant, incompetent and immaterial.

They were also objected to by the witnesses, in their own behalf and in behalf of the defendant companies of which they were officers, and by the General Paper Company as calling for evidence which the witnesses and the defendant companies were privileged from furnishing to the Government under the immunities contained in the fourth and fifth amendments to the federal constitution.

In connection with these objections the appellants contend that the requirement to give evidence, whether oral or documentary, although directly made to individual witnesses, nevertheless in substance is a requirement operating upon the defendant companies themselves, who are therefore at liberty in their own behalf to urge all the objections which an individual might urge when called as a witness in an action to which he was a party.

ARGUMENT.

A.

QUESTIONS RAISED BY THIS APPEAL.

The grounds upon which appellants contend that the orders of the court below are erroneous are these:

I. THAT THE EVIDENCE, DOCUMENTARY AND ORAL, WHICH THE WITNESSES WERE REQUIRED TO PRODUCE WAS NOT SHOWN TO BE MATERIAL TO PLAINTIFF'S CASE.

II. THAT THE DOCUMENTARY EVIDENCE CALLED FOR WAS NOT SHOWN TO BE IN THE POSSESSION OR UNDER THE CONTROL OF THE WITNESSES.

III. THAT THE EVIDENCE, DOCUMENTARY AND ORAL, REQUIRED TO BE PRODUCED, WAS IN THE NATURE OF INCRIMINATING EVIDENCE WHICH THE WITNESSES AND THE DEFENDANTS ARE PRIV.

ILEGED FROM FURNISHING TO THE PLAINTIFF UNDER THE PROVISIONS OF THE FEDERAL CONSTITUTION AND THE WELL RECOGNIZED PRINCIPLES OF EQUITY PROCEDURE.

I.

THAT THE EVIDENCE, DOCUMENTARY AND ORAL, WHICH THE WITNESSES WERE REQUIRED TO PRODUCE WAS NOT SHOWN TO BE MATERIAL TO PLAINTIFF'S CASE.

a. Documentary Evidence.

As far as the documentary evidence in question is concerned it is an undisputed fact that the books and documents called for are the books and documents and the property of the General Paper Company or some other of the defendant corporations. The proceeding must, therefore, so far as the defendants are concerned, be considered as only one method of compelling the production of books and documents belonging to parties to the suit, and it is plainly governed by the rules prescribed for the protection of parties from whom a discovery is demanded whether through a bill for discovery or through an application for an order directing the production of books and documents as evidence to establish the opposite party's cause of action.

The rules which apply to bills for discovery are thus stated in the standard works on equity pleading and practice:

"The right of a plaintiff in equity to the benefit of a defendant's oath is limited to a discovery of such material facts as relate to the plaintiff's case and does not extend to a discovery of the manner in which or of the evidence by means of which the defendant's case is to be established. * * * It is true that in those cases the question did not come before the court upon demurrer; but the rule is the same in whatever way the question may be raised: on demurrer, on exceptions to the defendant's answer, or on application to produce documents in the defendant's possession."

1st Daniell's Ch. Pl. & Pr. 5 Am. Ed. *pp. 579, 580.

"It is the right, as a general rule, of a plaintiff in equity to exact from a defendant a discovery upon oath as to all the matters of fact which being well pleaded in the bill are material to the plaintiff's case and which the defendant does not by his form of pleading admit. . . . The right of a plain-

tiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the plaintiff's case and does not extend to a discovery of the manner in which the defendant's case is to be exclusively established or to evidence which relates exclusively to his case."

Wigram's Law of Discovery, 1st Am. Ed. p. 15.

"It may be affirmed to be a general doctrine in equity that as the object of the court in compelling the discovery is either to enable itself or some other court to decide on matters in dispute between the parties, the discovery sought must be material either to the relief prayed by the bill or to some other suit actually instituted or capable of being instituted. If, therefore, the plaintiff does not show by its bill such a case as renders the discovery which he seeks material to the relief, * * * he shows no title to the discovery and consequently the demurrer will hold."

Story's Eq. Pl., Sec. 565.

"It may be added that this objection of immateriality may be to the whole bill, or to a part of the bill, or to a part only of the interrogatories, or to a particular defendant only."

Story's Eq. Pl., Sec. 568.

The plaintiff must show by clear averment the materiality of the documents sought to be disclosed, a rule which applies not only to bills of discovery but also to proceedings under the statute to compel the production of books or papers upon or in preparation for trial.

"To entitle the applicant to an order for production and inspection it must be shown that the document sought contains material evidence and that the production and inspection are necessary to the claim or the defense of the applicant. * * * To this end the applicant must show the particular information which is required and that there are entries in the documents sought as to the matter in regard to which the inspection is denied, or give other facts sufficient to satisfy the court that material evidence is contained in the document."

23 A. & E. Enc. of Law, pp. 176, 177.

Owhyee L. & I. Co. vs. Tautphaus, 109 Fed. R. 547.

Condict vs. Wood, 25 N. J. Law 319.

Bank vs. Mansfield, 48 Ill. 494.

Lester vs. People, 150 Ill. 408.

Bentley vs. People, 104 Ill. App. 353.

Wynn vs. Taylor, 109 Ill. App. 603.

- Walsh vs. Press Co., 48 N. Y. App. Div. 333.
 S. F. Copper M. & R. Co. vs. Humphrey, 111 Fed. R.
 772.
 Eschbach vs. Lightner, 34 Md. 528, 533.
 Jenkins vs. Bennett, 40 S. C. 393, 400.
 Berry vs. Matthews, 7 Ga. 457, 462, 463.

A plaintiff's right to any compulsory production of books is strictly limited to such documents and parts of documents as contain evidence relevant to plaintiff's case. His right to inspect is never larger than his right to read in evidence. The defendant is not compelled to discover his evidence if it cannot tend to establish affirmatively the case of the plaintiff.

- Hare on Discovery, 187, 198.
 Compton vs. Earl Gray, 1 Y. & J. 154.
 Bolton vs. Liverpool, 3 Sim. 489; S. C. 1 My. & K.
 Harris vs. Harris, 3 Hare 450.
 Van Kleeck vs. Ref. Dutch Ch., 6 Paige 600; S. C. 20
 Wend. 458.

Before the plaintiff is entitled to the production of a given document he must show *aliunde* that its contents are such as to entitle him to read it in evidence. He cannot compel production in order to prove that he is entitled to production.

- Wigram's Law of Discovery, Sec. 293.
 Story vs. Lennox, 1 Myl. & Cr. 534.
 Langdell on Eq. Pl., Sec. 164.
 Bligh vs. Benson, 7 Price 205.
 Stroud vs. Deacon, 1 Vesey 27.
 Barnett vs. Noble, 1 Jacob & W. 227.

Any party who is required to produce his books of account or other documents may seal such portions thereof as he swears contain nothing relating to the purposes of the discovery sought, and his affidavit that the parts so sealed do not relate to the matters in litigation is sufficient protection.

- 23 A. & E. Enc. of Law, p. 182.
 2 Wait's Pr. 548.
 Titus vs. Cortelyou, 1 Barb. 444.
 Robbins vs. Davis, 1 Blatchf. 238, 242.
 Campbell vs. French, 2 Cox Ch. Cas. 286.
 Girard vs. Penswick, 1 Wilson Ch. 222.
 Pyncheon vs. Day, 118 Ill. 9.

The English law about the production of documents has been thus fully cited because the various acts of Congress under which the proceedings below were taken have been evidently drawn with careful intent to permit this interference with private rights only so far as is absolutely necessary for the administration of justice and in strict accord with the chancery practice of England in regard to the production of documents.

The examination of the appellant witnesses took place before an examiner appointed by the circuit court of the district of Minnesota under the practice prescribed by Equity Rule No. 67. This rule contains no provision for the issue of subpoenas but has the following clause:

"In case of refusal of witnesses to attend to be sworn or to answer any question put by the examiner or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories."

Rule 78 in reference to the taking of testimony before a commissioner, a master, or an examiner appointed in any cause, provides for the issue of subpoenas in the usual form by the clerk, and then proceeds as follows:

"and if any witness shall refuse to appear or to give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master or examiner, an attachment may issue thereupon by order of the court or of any judge thereof in the same manner as if the contempt were for not attending or for refusing to give testimony in the court."

It will be seen that there is nothing in either of these rules relating to the issue of subpoenas *duces tecum* or to the punishment of witnesses disobeying such a writ.

The procedure adopted in these cases to compel the production of books and papers was apparently intended to be in accordance with that prescribed in Section 869 of the revised statutes for the issue of subpoenas *duces tecum* under a *dedimus potestatem*. Neither this statute nor any other that we have been able to find, nor any rule of court, expressly authorizes the issue of subpoenas *duces tecum* in connection with oral examinations before examiners, or in connection with depositions taken *de bene esse*. It is by no means clear whence the authority for the course taken is to be found. The provisions of the section referred to are as follows:

"Subpoenas duces tecum under a dedimus potestatem.

When either party in such suit applies to any judge of a United States court in such district or Territory for a subpoena commanding the witness therein to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpoena, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpoena, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpoena accordingly. And if the witness, after being served with such subpoena, fails to produce to the commissioner, at the time and place stated in the subpoena, any such paper, writing, written instrument, book, or other document, being in his possession or power, and described in the subpoena, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpoena, or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court."

Particular attention is called to the provision in the section above quoted that the judge must be satisfied that there is reason to believe that the document called for *is in the possession or power of the witness* and that the same, if produced, *would be competent and material evidence for the party applying therefor.*

Further as showing the care with which Congress has in every instance restricted the power of the courts in favor of parties from whom a compulsory production of books and papers is required, we cite from the judiciary act of 1789 the provision which is now incorporated in the revised statutes as Section 724:

"Power to order production of books and writings in actions at law.

In the trial of action at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases

and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases or nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default."

Under the section last quoted it is held that the production will not be ordered unless it appear affirmatively that the circumstances authorizing an order on a party to a suit to produce books or papers are those in which a discovery would be decreed in chancery and the evidence sought must be pertinent to the issue.

Jacques vs. Collins, 2d Blatchf. 23.

"The party must show that the paper exists and is in the control of the other party, that it is pertinent to the issue, and that the case is such that a court of equity would compel its discovery."

Iasigi vs. Brown, 1 Curtis, C. C. 401;

Russell vs. McLellan, 3 W. & M. 157.

By equity rule 33, adopted March, 1822, it was provided:

"In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit courts shall be regulated by the practice of the High Court of Chancery in England."

The act of May 8, 1872, and the rule just quoted, were effectual to adopt the equity procedure of the English High Court of Chancery in all cases not covered by the law of Congress or rule of court.

Story vs. Livingston, 13 Peters 359.

Equity rule 90, adopted March 2, 1842, is as follows:

"In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied, consistently with local circumstances and the local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice."

In the case of *Thompson vs. Worcester*, 114 U. S. 104, 112, decided in 1884, there is a note by the court, explanatory of rule 90, in part as follows:

"Reference is made to the first edition of Daniell's (published 1837) as being, with the second edition of Smith's Practice (published in the same year), the most authoritative of English Chancery practice in use in March, 1842, when our equity rules were adopted."

As to the authority of the early New York Chancery Reports (Johnson, Paige, etc.) upon questions of practice in equity in the United States courts, see Bates on Federal Procedure, Vol. 1, Sec. 22, giving the views of Hon. Samuel F. Miller, a former justice of this court, as stated in an address before the law department of the University of Pennsylvania, Oct. 1, 1888.

In *Caspary vs. Carter*, 84 Fed. R. 416, which was an application for the production of books and papers in an action at law, under Sec. 724 of the revised statutes, the court (Putnam, circuit judge) said:

"The only substantial allegations as to the materiality of the books whose production is asked is that they will 'tend to prove the issues in this action in the mover's favor,' and 'will tend to prove that the defendant in question did not make a bona fide contribution to the capital of the firm.' In other words, the plaintiff does not seek discovery of facts, but of matters of evidence which it is supposed will have more or less tendency to establish facts. The extent to which the affidavit accompanying the plaintiff's application goes is that the affiant '*believes*' the books called for will tend to prove as stated. *No basis for the belief is given.* The result is that if the statute requires that this application be granted it will always require that, *on a mere affidavit of belief*, each party to a suit at law may compel from the other party a general production of numerous books and papers in his possession to enable the moving party to make the attempt to sift out of them circumstances of more or less importance tending to support his position as to the issues in the action. We would thus have a result fundamentally inconsistent with all hitherto known rules, whether at law or in equity—a power given to the adverse party, or to the court, to expose and search through a mass of private transactions with the mere hope of finding therein something relevant to the cause in issue. It is impossible for us to credit that the law is so sweeping

as this, and no authority is produced to show that it is."
(Pp. 417, 418.)

In *Bischoffsheim vs. Brown*, 29 Fed. R. 341, which was a proceeding quite similar to the present proceeding, the court (Wallace, Circuit Judge) said:

"The motion seems to have been made and has been argued upon the theory that either party to a suit in equity may call upon his adversary to exhibit for inspection anything and everything in writing under the latter's control which may assist the party who makes the call. The case of *Coit vs. North Carolina Gold Amalgamating Co.*, 9 Fed. R. 557, is cited as an authority in this direction. Notwithstanding this authority it must be held that such practice cannot be sanctioned. Courts of equity and courts of law have always been solicitous to protect parties and witnesses against unnecessary inquisition into the contents of their private papers by those who have no interest in them, and exercise the power of assisting parties in obtaining a compulsory production of written evidence from their adversaries or from witnesses only under well established restrictions.

"In courts of equity a bill or a cross-bill alleging that the defendant has in his possession or power documents or papers relating to the matters of the bill which if produced will establish their truth is the foundation of the proceeding."

In *Ryder vs. Bateman*, 93 Fed. R. 31, a similar proceeding, in which it was sought to compel the plaintiffs to produce, for the inspection of the defendants, a certain deed alleged by the defendants to be a forgery and upon which the suit was based, the court (Hammond, J.) said:

"This application must be denied. It is a great mistake to suppose that parties to a litigation have a promiscuous right to the production and inspection of the papers and documents in the possession of their adversary. A loose practice has grown up on this subject and there is generally a good deal of complaisance on the part of counsel and the parties to the suit in the production of papers; but whenever the practice has been challenged, it has been found that there are limitations to the right, which it is necessary that the courts should safely guard in order to secure the citizen against an invasion of his right to hold and keep his papers from unlawful or impertinent inspection. Even litigants who expect to use their papers in evidence are not required to produce them for the information of the other side, except

under strictly guarded rules of practice that are intended to secure the protection of this right. Mr. Justice Bradley, in the case of *Boyd vs. U. S.* 116, U. S. 616, 6 Sup. Ct. 524, denounces the practice of invading this right under the forms of law by judicial process, and shows how it is guarded in criminal procedure by a constitutional provision; which was also enforced in the case of *Potter vs. Beal*, 2 C. C. A. 60, 50 Fed. R. 860, by annulling an order that had been granted for the inspection of papers in a criminal case. There is, perhaps, no constitutional provision to protect the citizen against seizures and searches in civil suits as in criminal cases, but it will be found, nevertheless, that the courts carefully avoid any unlawful violation of the citizen's right in respect of this protection. *Railroad Co. vs. Botsford*, 141 U. S. 250." (P. 33.)

The opinion then proceeds with an able and exhaustive review of the authorities, English and American, in support of the conclusion as stated. See also:

Lester vs. People, 150 Ill. 408;

V. J. Bloede Co. vs. Bancroft & Sons Co., 98 Fed. Rep. 175, 189.

In *Boyd vs. United States*, 116 U. S. 616, this court said:

"The views of the first Congress on the question of compelling a man to produce evidence against himself may be inferred from a remarkable section of the judiciary act of 1789. The 15th section of that act introduced a great improvement in the law of procedure. The substance of it is found in Sec. 724 of the Revised Statutes, and the section as originally enacted is as follows, to-wit:

"All the said courts of the United States shall have power in the trial of actions at law, on motion and due notice thereof being given, to require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceedings in chancery; and if a plaintiff shall fail to comply with such order to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order to produce books or writings, it shall be lawful for the courts respectively, on motion as aforesaid, to give judgment against him or her by default."

"The restriction of this proceeding to 'cases and under circumstances where they' (the parties) 'might be compelled to produce the same' (books or writings) 'by the ordinary rules of proceedings in chancery,' shows the wisdom of the Congress of 1789. The court of chancery had for generations been weighing and balancing the rules to be observed in granting discovery on bills filed for that purpose, in the endeavor to fix upon such as would best secure the ends of justice."

It is apparent that it was the view of the court that the power conferred by Sec. 724 upon courts of law was co-extensive with the practice prevailing in equity. By the terms of Sec. 724, as we have seen, the power of the court to compel production is limited to "the books or writings in their possession or power which contain evidence pertinent to the issue." The pertinency of the evidence contained in the documents called for being a condition of the right to their production, it would seem to follow as a corollary that the pertinency of the evidence must first be established.

In *Owhyee Land & Irrigation Co. vs. Tautphaus*, decided by the circuit court of appeals for the Ninth Circuit in 109 Fed. R. 547, the court said:

"This section of the statutes plainly requires that before a party to an action at law may be held to be in default for failure to produce books or writings in his possession, there must have been an order of the court, or, in other words, that before he shall be compelled to produce such evidence under the penalty of the statute, there must first be a judgment of the court upon the question whether or not the evidence so sought is *pertinent to the issues* and ought to be produced by him to whom the order is directed. Such is the language of the statutes, and the reasons why it should be so are too apparent to require extended comment." (Citing *Boyd vs. United States*, *Hylton's Lessee vs. Brown*, 1 Wash. C. C. 298, *Finch vs. Rikeman*, 2 Blatchf. 302, and *Triplett vs. Bank*, 3 Cranch. C. C. 646.) (P. 549.)

The opinion continues:

"When we consider the cases and circumstances under which discovery may be had in equity, it is clear that the remedy afforded by the statute can only be secured upon a proper application before the court, indicating the nature of the books or writings that are sought to be produced, and

showing that the evidence to be obtained is *material to the case of the applicant*, and thereupon obtaining the judgment of the court directing its production. *Brown vs. Swann*, 10 Pet. 497; *Bell vs. Pomeroy*, 4 McLean 57; *Vaughan vs. Railroad Co.*, 4 Sawy. 280." (P. 549.)

It is not sufficient for a party to state generally in his petition for the production of documents that they contain matters relevant to the issue in order to entitle him to their inspection, or to base his allegations in regard to their materiality upon information and belief. Facts and circumstances must be stated from which the court may determine the question of the materiality and relevancy.

The rule in relation to the compulsory production of books and papers under the New York Code is thus stated:

"The party applying must show to the satisfaction of the court the materiality and necessity of the discovery or inspection sought, the particular information which he requires, and, in the case of books and papers, that there are entries therein as to the matter of which he seeks a discovery or inspection. A discovery will not be ordered to enable a party to find out whether he has a cause of action or whether there may not be some entries or papers that will be pertinent. A *prima facie* case, or at least facts pointing directly to that result, must be shown before a discovery in aid thereof will be ordered. Facts and circumstances must be stated sufficient to satisfy the court that the books and papers sought to be examined do in fact contain material evidence for the party, and it is not enough that the party believes or is advised that material evidence will be found."

Walsh vs. Press Co., 48 N. Y. App. Div. 333, 335.

Particular attention is called here to the language quoted above from the case of *Caspary vs. Carter*, 84 Fed. R. 416.

We shall look in vain in the moving petition for allegations conforming to the rules thus laid down by the courts, and it is evident that the application is not a request for the production of specified evidence, but a request for the production of books and documents for the purpose of ascertaining whether they contain evidence. Notwithstanding anything that is stated or shown in the petition or the record, it may well turn out that the evidence contained in the books and documents called for is entirely in favor of the defendants or else wholly irrelevant. We may be permitted to quote from the celebrated opinion of

Lord Camden, which is quoted at length by this court in the case of *Boyd vs. United States*:

"Papers are the owner's goods and chattels. They are his dearest property, and are so far from enduring a seizure that they will hardly bear an inspection; and though the eye can not by the law of England be guilty of a trespass, yet where private papers are removed and carried away the secret nature of those goods will be an aggravation of the trespass and demand more considerable damages in that respect. * * * Lastly, it is urged as an argument of utility, that such a search is the means of detecting offenders by discovering evidence. I wish some cases had been shown where the law forceth evidence out of owner's custody by process. There is no process against papers in civil causes. It has been often tried but never prevailed. Nay, where the adversary has by force or fraud got possession of your own proper evidence, there is no way to get it back but by action. In the criminal law such proceeding was never heard of; and yet there are some crimes, such, for instance, as murder, robbery and house-breaking, to say nothing of forgery and perjury, that are more atrocious than libeling. But our law has provided no paper search in these cases to help forward the conviction. Whether this proceedeth from the gentleness of the law towards criminals, or from a consideration that such a power would be more pernicious to the innocent than useful to the public, I will not say. It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem that search for evidence is disallowed upon the same principle. Then, too, the innocent would be confounded with the guilty."

116 U. S. pp. 627, 628, 629.

The authorities which have been cited are sufficient to show the error of the opinion of the circuit judge, that the court was not required upon this hearing to pass upon the question of materiality. This is further shown by the authorities next to be cited.

b. Oral Testimony.

The doctrine which we have been endeavoring to establish is not confined to documentary evidence. It applies also to the case of oral testimony. The materiality of any question must be made to appear before a witness can be required to answer it and before he can be adjudged guilty of a contempt of court

for a refusal to answer. This rule is important when we consider the numerous questions asked of the witnesses which are not directly connected with the production of books and papers, but which they declined to answer under the advice of counsel for the reason that they were wholly irrelevant and immaterial to the plaintiff's case. Such were questions calling for the amount of dividends paid by the General Paper Company; for the amount of its annual sales; for conversations which took place between various persons prior to the organization of the General Paper Company; for conversations between a witness and a reporter of a newspaper at some subsequent occasion; calling for information in reference to a pool involving butchers' fibre, in regard to which there are no charges in the complaint, and without a hint of interstate commerce being affected by such pool; for other conversations and other matters wholly immaterial to the issues raised upon the pleadings in the principal suit.

The leading case upon this subject is *In re William Judson*, 3 Blatchf. 148.

"This was a motion for an attachment to compel one William Judson to answer a question put to him on his examination before a commissioner of this court, as a witness *de bene esse* under the provisions of the 30th section of the Act of Congress of September 24th, 1789 (1 U. S. Stat. at Large, 88, 89), in a suit pending in the circuit court of the United States for the district of Massachusetts. In the course of his examination the following question was propounded to the witness: 'Did you pay Chaffee any money for said assignment' (in regard to which assignment he had previously been questioned and had given testimony) 'at the time it was given, or have you paid him any since therefor, and when, and how much?' The witness declined to answer the question." (P. 149.)

"I see no reason why any more stringent obligation should be imposed upon a witness in these outside examinations than is enforced in court. Before the court will adjudge a witness to be in contempt or commit him therefor, it will require more than proof of the fact that he declines to respond to a question. It will enquire whether the question is relevant and material to the case or hearing (1 Greenl. Ev., Sec. 319); and also whether the witness is legally exempt from answering it. No contumacy can be imputed to him until these points are determined. The law gives no color to the practice, which not infrequently intrudes upon judicial proceedings, of besetting a witness with impertinent enquiries,

calculated to pry into his private affairs, or into his own character or that of other persons, or to subject him to personal liability, when the enquiries are not shown to have a legitimate bearing upon the cause on trial; and it is guarded in coercing answers to questions when their materiality is not clearly manifest. In this case, the court will not suspect any improper motive in the party pushing the enquiry which was resisted by the witness, nor, on the other hand, is it furnished with means to determine that the witness refused to answer from a refractory or contumacious disposition. It is enough to say, that the party who invokes the court to order the witness to be imprisoned until he consents to give the testimony demanded, has omitted to prove that such testimony might be relevant and material to the issue in the cause. The English Court of Exchequer refused an attachment against a witness for not attending the court upon subpoena, although the affidavits asserted that his evidence was material and necessary for the party who subpoenaed him, because of the immateriality of the evidence sought for, and also because the affidavits did not specify in what respect the evidence was material (*Dicas vs. Lawson*, 1 *Crompt. M. & R.* 934; *S. C.* 5 *Tyrwh.* 235); and an action cannot be maintained against a witness by the party who subpoenaed him for refusing to appear and testify, without proof that his testimony was material. (3 *Daniell's Ch. Pr.* 27)." (Pp. 150, 151.)

"My decision is placed on the ground that there is no evidence before the court that the question which the witness refused to answer had any materiality whatever to the cause, and that this court ought not to award the high writ of attachment to draw out answers to questions which may turn out to be frivolous and impertinent. There must exist a plain reason for believing that the ends of justice may be frustrated by the recusancy of a witness, unless his reply be coerced to an interrogatory, before the court will subject him to the summary and imperative process of attachment." (P. 152.)

The case of *Judson* was used by Judge Jenkins as authority for a very similar ruling in the case *In re Allis*, 44 *Fed. R.* 216. This was in a suit for an infringement of a patent.

"After issue joined, the testimony of William W. Allis, a resident of this district, and the secretary of the complainant, was taken by consent at his place of residence, upon oral interrogatories, and before an examiner of this court. Upon the cross-examination of the witness, and under advice and

request of counsel for the complainant company, he declined to produce certain documents and to answer a certain question; whereupon the defendant moves for an order compelling the production of the required instruments and requiring the witness to answer the interrogatory. It is objected, in opposition to the motion, that the propriety of the production of the document demanded, and the relevancy of the interrogatory propounded, can only be determined by the court in which the action is depending, and until so determined no jurisdiction is lodged with this court to act in the premises." (P. 217.)

"It is insisted that the rule contemplates that all questions must be referred, as to their relevancy, to the court having jurisdiction of the cause. Undoubtedly that court has the ultimate control of and decision upon the materiality of the examination. But it is quite another matter with respect to the compulsion of a witness to answer. In such case the court or judge exercising the power must be satisfied of the contumacy of the witness. The witness responds to the authority dominant at his residence. He is beyond the coercive power of the court entertaining the cause. His disobedience is to the mandate of the court issuing the writ of subpœna, not to the court issuing the commission. The question of disobedience involves both the materiality of the interrogatory and the privilege of the witness, and both must be considered by the court exercising jurisdiction of the witness; and this, as well for the protection of the witness as for the proper conduct of the examination." (P. 218.)

"As an incident to the power of compulsion, and by analogy to the rule obtaining with respect to depositions at law under oral interrogatories, the court or judge having jurisdiction of the witness, for the purposes of the exercise of the power of compulsion and the punishment of a refractory witness, must determine the materiality of the question declined to be answered." (P. 219.)

The same doctrine is laid down in the case of *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447. In this case the court says as follows:

"Suffice it in the present case to say, that as the Interstate Commerce Commission by petition in a circuit court of the United States seeks, upon grounds distinctly set forth, an order to compel appellees to answer particular questions and to produce certain books, papers, etc., in their possession, it was open to each of them to contend before that court that he

was protected by the Constitution from making answer to the questions propounded to him, or that he was not legally bound to produce the books, papers, etc., ordered to be produced, or that neither the questions propounded nor the books, papers, etc., called for relate to the particular matter under investigation, nor to any matter which the commission is entitled under the Constitution or laws to investigate."

154 U. S., p. 479.

II.

THAT THE DOCUMENTARY EVIDENCE CALLED FOR WAS NOT SHOWN TO BE IN THE POSSESSION OR UNDER THE CONTROL OF THE WITNESSES.

The only ground upon which the possession or control of the books and documents called for could be said to be in the witnesses is the fact that they, or some of them, hold official positions either in the General Paper Company or in some one or more of the other defendant companies.

The witness Harmon directly states in his answer that the papers which he was required to produce are not and were not at the time he was asked to produce them in his custody or under his control, and that he then had and now has no power to produce or to compel the production of said papers. He has not since some time before his examination held any other position than that of director in any of the defendant corporations. This statement ought to be sufficient to settle the question of the power of the court to order any production of papers by said Harmon.

Each of the witnesses, Alexander, Stuart and Whiting, alleges in his answer that he is in no other manner one of the custodians of the books or papers called for than as an officer of the General Paper Company; that said books and papers are the books and papers of the General Paper Company and not of the witness and are subject to the control of the General Paper Company and not of the witness, and that the General Paper Company has objected to the production of the books and papers for inspection by counsel for complainant for the purpose of being offered in evidence in the cause.

Further, it is constantly made to appear from the record of the proceedings before the examiner, that the record books and papers of the General Paper Company, at the time of the examination and before, were in the general charge and actual possession of counsel for the General Paper Company, who, as the

representative of the company, was charged with the control of such books and papers and with the responsibility of permitting their production and inspection or use on the hearing or refusing such permission. (Pp. 148, 150, 153, 154, 155, 171, 174, 187, 206, 214, 230, 261, 262, 263, 276, 290, 294, 299 of transcript in Nos. 381, 382, 383 and 384.)

It is plain, therefore, that the defendant corporations had retained the possession and control of the books and papers called for, and are here asserting their rights as parties to deny to the complainant the right of inspection or use as evidence as the record stands, without further proof than has yet been offered of the materiality of the evidence which they may contain without a further consideration by the court of the justice of the claim of the defendants that they are privileged from producing evidence of an incriminating character.

III.

THAT THE EVIDENCE, DOCUMENTARY AND ORAL, REQUIRED TO BE PRODUCED, IF MATERIAL TO PLAINTIFF'S CASE, IS IN THE NATURE OF INCRIMINATING EVIDENCE WHICH THE WITNESSES AND THE DEFENDANTS ARE PRIVILEGED FROM FURNISHING TO THE PLAINTIFF UNDER THE PROVISIONS OF THE FEDERAL CONSTITUTION AND THE WELL RECOGNIZED PRINCIPLES OF EQUITY PROCEDURE.

The Anti-Trust Act of July 2d, 1890, contains the following provisions:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

"Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states or with foreign nations shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine not exceeding five thousand dollars

or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

"Section 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the attorney general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited."

3 Comp. Stats. pp. 3200, 3201.

The privilege against self-incrimination is claimed under the provisions of the fourth and fifth amendments to the Federal Constitution, which are as follows:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause and supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

"No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

There is no doubt of the criminal character of the act of 1890, above quoted, or that the penalties prescribed by it would sustain the claim of privilege on the part of all the appellants from furnishing testimony against themselves in this proceeding if it were not for a provision contained in the Act of February 25, 1903, making appropriations for the year ending June 30, 1904. At the end of a long bill containing the general legislative, executive and judicial appropriations for the year ending June 30, 1904, is an appropriation of \$500,000.00 for the enforcement of the Interstate Commerce Act, the Anti-Trust Act and one other act relating to revenue,

"to be expended under the direction of the attorney general in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits and prosecutions under said acts in the courts of the United States;

"Provided, that no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify

or produce evidence, documentary or otherwise, in any proceeding, suit or prosecution under said acts;

"Provided, further, that no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying."

Comp. Stats. Supplement 1903, pp. 366, 367.

The first of these provisions, it is contended, is a complete protection to the witnesses testifying in prosecutions under the acts therein referred to against all liability to penalties or forfeitures on account of any matters concerning which they may testify, and consequently destroys any claim of privilege which might otherwise be asserted.

The appellants contend that the scope of the inquisition to which they are subjected by the orders appealed from is much broader than the immunity clause, and tends to subject them to penalties and forfeitures against which the immunity clause has no effect to relieve them.

A

The discovery which by the orders appealed from the witnesses are required to make, might tend to subject them to penalties and forfeitures under the laws of the state of Wisconsin.

The Wisconsin Statutes (revision of 1898) provide as follows:

"Section 1747e. Every contract or combination in the nature of a trust or conspiracy in restraint of trade is hereby declared illegal. Every person who shall combine or conspire with any other person to monopolize or attempt to monopolize any part of the trade or commerce in this state shall forfeit for each such offense not less than fifty dollars nor more than three thousand dollars. Any such person shall also be liable to any person transacting or doing business in this state for all damages he may sustain by reason of the doing of anything forbidden by this section.

"Section 1747h. The word 'person' wherever used in the three next preceding sections shall be deemed to include, besides individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States, any of the territories of [or] this or any other state or of any foreign country."

These statutes, it will be observed, are substantially the same in relation to commerce within the state as the Act of Congress

in relation to combinations in restraint of interstate commerce. The questions which the witnesses are required to answer are not limited in their scope to matters of interstate commerce, but call for disclosures generally regarding the purpose of the organization of the General Paper Company, the minutes of the meetings of its board of directors, and the plans and operations of the General Paper Company in its relation with the other defendants. *The combination charged in the bill of complaint and which the questions seek to establish, include by express allegation sales within the state of Wisconsin, where all but a few of the defendants' mills are located, and is quite as much a combination in restraint of commerce within the state as it is a combination in restraint of interstate commerce.* It is conceivable that the evidence called for might disclose agreements and combinations relating solely to trade and commerce within the state. At any rate it is clear that if any combination exists, it is not limited in its scope to interstate commerce.

The latitude allowed a witness to decline to answer questions which might or might not have a tendency to incriminate, is thus stated by this court in *Counselman vs. Hitchcock*, 142 U. S., 547, at page 565, in the language of Chief Justice Marshall in an early case:

"If the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be, to answer the question or not. If, in such a case, he say upon his oath, that his answer would criminate himself, the court can demand no other testimony of the fact. * * * According to their statement (the counsel for the United States), a witness can never refuse to answer any question unless that answer, unconnected with other testimony, would be sufficient to convict him of crime. This would be rendering the rule almost perfectly worthless. Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness, by disclosing a single fact, may complete the testimony against himself; and to every effectual purpose accuse himself, as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom, he is safe; but draw it from thence, and he is exposed

to a prosecution. The rule which declares that no man is compellable to accuse himself, would most obviously be infringed, by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is attainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws." (Pages 565, 566.)

The right of a party to decline to answer, in a suit in the Federal Court, as to matters which might subject him to penalties under the state law, was affirmed by this court at an early date.

United States vs. Saline Bank of Virginia, et al., 1 Pet., 100.

In that case the plaintiffs, as creditors of an unincorporated bank, filed a bill against the cashier, and a number of persons, stockholders of the bank, for a discovery and relief; who, in reply to the bill, state that their answers to the bill would subject them to penalties under the laws of Virginia, prohibiting unincorporated banks. The opinion of the court, delivered by Mr. Chief Justice Marshall, is as follows:

"This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties under the statute of Virginia.

The court below decided in favor of the validity of the plea, and dismissed the bill.

It is apparent that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it." (P. 104.)

The state statutes are aimed at combinations in restraint of trade within the jurisdiction of the state. A combination having reference solely to interstate trade, probably would not be within the jurisdiction of the state legislature; but it will hardly be contended that a combination comprehending within the scope of its operation both state and interstate trade, would not be amenable to state authority so far as it affected trade within the state; and certainly a combination limited in its scope and operation to trade within the state would be subject to the jurisdiction of the state alone.

It is submitted that it is not within the province of congress to suspend the operation of these state statutes or to interfere with their enforcement in their relation to trade within the state, and therefore the immunity clause would be ineffectual to relieve the appellants against liability under the state law.

The jurisdiction of state authority over trade within the state is as exclusive and unqualified as the jurisdiction of Congress over trade between the states.

Addyston Pipe Co. vs. United States, 175 U. S., 211 (where injunction previously issued was modified to make it conform to this rule.)

Allen vs. Pullman Co., 191 U. S., 171.

National Cotton Oil Co. vs. Texas, 197 U. S., 115.

Suppose the answers of the witnesses should disclose a combination in restraint of trade, limited in its scope and operation strictly to trade within the state, Congress would have no power to punish such a combination or to legislate in respect to it. If the immunity clause in question is operative on state authority and the directors, officers and responsible agents have testified, the state would have no power to punish. So the combination would henceforth be immune from either state or federal discipline.

It may be freely admitted that the regulation of interstate commerce being one of the matters committed to Congress by the constitution, Congress may make "all laws which shall be necessary and proper for carrying into execution" such power of regulation. Such is, in effect, the express language of the constitution. But this language implies a limitation. A measure to be justified under this incidental power must not only be necessary in the sense that it has a reasonable adaptation to the end of executing some express power, but it must be proper in the sense that it does not run counter to the general policy and spirit of the constitution. Nothing is more fundamental, under our system of government, than the division of powers between the federal and state governments. However supreme the federal government may be within the sphere of its delegated powers, it can exercise no power which has not been delegated. There are many essential powers of government which are left to the states, and which, if not exercised by them, cannot be exercised at all. It would seem, therefore, absolutely necessary to the completeness and adequacy of our system of government that the reserve powers of the states which Congress itself cannot exercise or supply should not be suspended in the exercise by the general government of its delegated powers. It must be

admitted that the primary purpose of the constitution was to form, in conjunction with the powers reserved to the states, a complete system of government for the protection of life and property within the states, as well as "a more perfect Union." It being undeniably true that there are certain functions of government which Congress has no power to exercise, as, for example, the ordinary protection of life and property within the states,—it must follow that it has no power to suspend the operations of such governmental functions by the states themselves. In other words, Congress should not have the power to take away from the states the protection or governmental rights which it has no power to give. If it be granted that Congress may suspend the operation of the criminal laws of the state, in respect of purely intra-state commerce as a means to the end of enforcing its regulations of interstate commerce, it may suspend the operation of any state law whatever in relation to crime,—as for example, by offering general immunity to persons guilty of crime, who may give testimony or aid in any way in the enforcement of the interstate regulation.

In assuming this position it is not necessary to take the ground that Congress could not, in any case, enact a law as the means of carrying into effect its express powers, which in its operation would have the effect to suspend the operation of state laws in respect of purely domestic matters. But it is insisted that such suspension of state authority can only be justified on the ground of some necessity which justified the suspension of the normal relations between the state and federal authority,—as for example, the exercise of the war power.

It is unnecessary to review or even allude to the decisions of this court which are the great landmarks of constitutional construction on the division of powers between the state and federal governments; and for us to undertake to rephrase the arguments contained in those decisions would be, in the language of one of the greatest of them, "to hold a lighted taper to the sun."

McCullough vs. Maryland, 4 Wheaton at p. 419.

The necessary independence of the state courts of federal authority, within their appropriate spheres of action, is well stated in *Craig vs. Dimock*, 47 Ill., 308. The question before the court was where the clause in the act of Congress of June 30th, 1864, providing that unstamped documents should not be receivable in evidence, was applicable to the state courts. It was held that this clause did not apply to the state courts. In the opinion the court said :

"The object of this act and of all other acts of Congress of like nature, is to raise money to support the government, and pay its debts, and for this purpose, vast powers were granted by the states in framing the constitution of the United States, to the Congress established by it; but the powers not so delegated to the United States by the constitution, nor prohibited by it to the states, were reserved to the states respectively, or to the people.

While, then, the power to levy taxes for the purposes indicated in the constitution may be admitted, it cannot be admitted, it can be so exercised as to take from the domain of state legislation, all such subjects as are properly confided to it, and the care of which has not been surrendered to the Congress by the states. * * *

We do not think it requires any argument to prove, that Congress, under the constitution, has no such power, and under the pretense of levying taxes, cannot so direct that power as to enter into our state courts and take from them the powers with which the state laws have vested them.

It is eloquently remarked by Chancellor Kent that, 'The vast field of the law of property, the very extensive head of equity jurisdiction, and the principal rights and duties which flow from our civil and domestic relations, fall within the control, and we might almost say the exclusive cognizance of the state governments. We look essentially to the state courts for protection to all these momentous interests.' 1 Kent's Com., 483. To hold that Congress in the exercise of the taxing power, can enter into these courts, and prescribe what shall be evidence therein, is so revolting to all our notions of federal and state power as to compel us to refuse to yield any acquiescence in such a doctrine. By admitting it, the power and sovereignty of the states over legitimate subjects of state power and sovereignty, are at once annihilated." (Pp. 312, 313, 316.)

In *Collector vs. Day*, 11 Wall., 113, the question was as to the right of Congress under the constitution of the United States, to impose a tax upon the salary of a judicial officer of a state. The right was denied. In the opinion, Justice Nelson, speaking for the court, said:

"It is a familiar rule of construction of the constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention

"of the framers of the constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely, "The powers not delegated to the United States are reserved to the states respectively, or to the people.' The government of the United States, therefore, can claim no powers which are not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

"The general government, and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the states within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.

"The relations existing between the two governments are well stated by the present Chief Justice in the case of *Lane County vs. Oregon*, 7 Wall., 76. 'Both the states and the United States,' he observed, 'existed before the constitution. The people, through that instrument, established a more perfect union, by substituting a national government, acting with ample powers directly upon the citizens, instead of the confederate government, which acted with powers greatly restricted, only upon the states. But, in many of the articles of the constitution, the necessary existence of the states, and within their proper spheres, the independent authority of the states, are distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them, and to the people, all powers, not expressly delegated to the national government, are reserved.' Upon looking into the constitution it will be found that but a few of the articles in that instrument could be carried into practical effect without the existence of the states.

"Two of the great departments of the government, the executive and legislative, depend upon the exercise of the powers, or upon the people of the states. The constitution guarantees to the states a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the states in our complex system, as recognized by the constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from

"the family of nations, it would seem to follow, as a reason-
 "able, if not a necessary consequence, that the means and in-
 "strumentalities employed for carrying on the operations of
 "their governments, for preserving their existence, and ful-
 "filling the high and responsible duties assigned to them in
 "the constitution, should be left free and unimpaired, should
 "not be liable to be crippled, much less defeated by the tax-
 "ing power of another government, which power acknowl-
 "edges no limits but the will of the legislative body imposing
 "the tax. And, more especially, those means and instrumen-
 "talities which are the creation of their sovereign and re-
 "served rights, one of which is the establishment of the judi-
 "cial department, and the appointment of officers to admin-
 "ister their laws. Without this power and the exercise of it,
 "we risk nothing in saying that no one of the states under the
 "form of government guaranteed by the constitution could
 "long preserve its existence. A despotic government might.
 "We have said that one of the reserved powers was to estab-
 "lish a judicial department; it would have been more accur-
 "ate and in accordance with the existing state of things at
 "the time, to have said the power to maintain a judicial de-
 "partment. All of the thirteen states were in possession of
 "this power, and had exercised it at the adoption of the con-
 "stitution; and it is not pretended that any grant of it to the
 "general government is found in that instrument. It is,
 "therefore, one of the sovereign powers vested in the states by
 "their constitutions, which remained unaltered and unim-
 "paired, and in respect to which the state is as independent of
 "the general government as that government is independent
 "of the states.

"The supremacy of the general government, therefore, so
 "much relied on in the argument of the counsel for the
 "plaintiff in error, in respect to the question before us, cannot
 "be maintained. The two governments are upon an equality
 "and the question is whether the power 'to lay and collect
 "taxes' enables the general government to tax the salary of a
 "judicial officer of the state, which officer is a means or in-
 "strumentality employed to carry into execution one of its
 "most important functions, the administration of the laws,
 "and which concerns the exercise of a right reserved to the
 "states?" (Pp. 124-126.)

The same principle of constitutional construction, which
 would prohibit the federal government from interfering with
 the regulation by the states, of their domestic concerns, under

whatever guise, is recognized by Mr. Chief Justice Marshall in *McCulloch vs. State of Maryland*, *supra*, as follows:

"If we measure the power of taxation residing in a state, by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a state unimpaired; which leaves to a state the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the states, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatibility of a right in one government to destroy what there is a right in another to preserve." (Pp. 429, 430.)

The immunity clause in question either extends to all crimes against the state, which may be disclosed by the witness in proceedings under the act, or it does not extend to any of them. Suppose it should develop that the plans of a combination proceeded against, included a plot to put to death all parties in the same line of business, who should hold out and refuse to come into the combination, or a plot to bribe legislatures and courts, or to buy up votes at elections, and that such plots had in fact been carried into execution by the actual consummation of the guilty design within the limits of a single state. It would hardly be contended that the parties to the crime would be immune from punishment by the state, because the evidence of the crime was disclosed by them in proceedings under the anti-trust act. Why? Because the crime is one which would fall exclusively within the jurisdiction of the state courts and not within the purview of the immunity clause, which must be assumed to relate only to matters over which the jurisdiction of Congress extends. By the same reasoning, doubtless, it would not be held to apply to any matters within the jurisdiction of the state courts.

It is the settled law of this court that the Fifth Amendment has no application to state courts and their proceedings under state laws.

Barron vs. Mayor of Baltimore, 7 Pet., 243.
Withers vs. Buckley, 20 How., 84.
Pumpelley vs. Green Bay Co., 13 Wall., 166.
Eilenbecker vs. District Court of Plymouth County,
 134 U. S., 31.

If the state courts are so far independent in their proceedings to punish crime against the state, that they are not bound by the constitutional amendment itself, how can it be said that they are bound by the immunity clause in question, the obvious purpose of which was to avoid the effect of the amendment? As Congress cannot create or punish crimes against the state, it should not have the power to forgive them when created, or to interfere with their punishment, by the state.

If it be granted that it was within the conceivable powers of Congress in the circumstances under which the immunity clause was enacted, to make it generally applicable to state as well as to federal courts, it cannot be said, under a fair construction of the clause, that Congress intended to exercise such extreme power. Being in the nature of an exception to a rule of liability, it should be strictly construed.

Sutherland on Statutory Construction, Sec. 223.

United States vs. Dickson, 15 Pet., 141.

Epps vs. Epps, 17 Ill. App., 196.

The clause in question is contained in the Appropriation Act for the enforcement of three specific acts, all of which contain criminal or penal provisions. A fair construction of the immunity contemplated by this clause would limit it to the penalties and forfeitures provided for in the three acts to which it relates, and certainly a strict construction would so limit it. It is only by the most latitudinarian construction that it can be extended to matters generally cognizable in the state as well as the federal courts. Such a construction, if it does not exceed, certainly stretches to the uttermost limits the conceivable powers of Congress under its interstate commerce jurisdiction. Under well recognized principles of interpretation, a construction of a statute which raises doubts as to its validity and calls in question the power of the legislature to enact it, is to be avoided, if possible.

The view that the clause is confined, in its operation and effect to grant immunity, to the penalties provided for in the several acts to which it relates, finds support in

United States vs. Price, 96 Fed. Rep., 960.

In that case, referring to the immunity clause contained in the interstate commerce act, it was held that:

"The amnesty given to the witness is limited to the matters to which he is compelled to testify, and extends only to 'a cause or proceeding based upon or growing out of an alleged violation' of the said act to regulate commerce, and that as to other matters regarding which he may be interrogated as a witness he is left, first, to his privilege of refusing to answer lest he may criminate himself, or, second, if he answers, then to his rights under Rev. St., Sec. 860, supplemented by the further provisions of the act of 1893, prohibiting the use of his testimony against him."

THE CASE OF BROWN VS. WALKER, MUCH RELIED UPON IN THE COURT BELOW, IS NOT PROPERLY APPLICABLE TO THE FACTS OF THE PRESENT CASE.

It was contended in the court below, and doubtless will be argued here, that the case of *Brown vs. Walker*, 161 U. S., 591, is decisive authority for the proposition that the immunity clause in the Appropriation Act of 1903 is binding upon the state as well as on the federal courts, and operates as a complete protection to the witnesses from any penalty or prosecutions whatever in relation to any matter, transaction or thing concerning which they may testify. But as we understand that decision, it does not go to any such extreme. True, there is some general language in the opinion, which considered apart from the facts before the court and given general application, would seem to justify such contention. But it is not the rule to give to the general language of an opinion such sweeping and universal application. In the language of this court in another case: "The opinion of a court must always be read in connection with the facts upon which it is based."

Doyle vs. Continental Insurance Co., 94 U. S., 538.

The language of the opinion in *Brown vs. Walker*, upon which the argument for such sweeping application of the clause in question is based, is found on page 606 et seq. of the report, commencing as follows:

"It is argued in this connection that, while the witness is granted immunity from prosecution by the federal government, he does not obtain such immunity against prosecution in the state courts. We are unable to appreciate the force of this suggestion. It is true that the constitution does not operate upon a witness testifying in the state courts, since

we have held that the first eight amendments are limitations only upon the power of Congress and the federal courts, and are not applicable to the several states, except so far as the Fourteenth Amendment may have made them applicable." (Citing cases.)

"There is no such restriction, however, upon the applicability of federal statutes. The sixth article of the constitution declares that 'This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding'."

The court was unquestionably there speaking of the operation and effect of federal statutes within the clear scope of the power and authority of Congress to legislate. The matter immediately under discussion was the application of the immunity clause in the amendment of the interstate commerce act to the facts of the case before the court. The facts were that a witness in an investigation by the interstate commerce commission had been asked certain questions relating exclusively to interstate commerce, in respect of which it may be freely admitted the authority of the federal government is exclusive and supreme. The question the court was called upon to decide was whether the answers to the particular questions in that case relating as they did exclusively to interstate commerce, could be made the basis of prosecution in the state courts, in the face of the immunity clause contained in the interstate commerce act as an incident of the regulation by Congress of interstate commerce. As applied to the facts of the particular case it was simply a question of the paramount authority of Congress over interstate commerce. That the exclusive authority of Congress over the subject-matter to which the question related, was the real ground of the decision upon this point, is made evident by a paragraph in one of the dissenting opinions, as follows:

"It is said that the constitutional protection is solely against prosecutions of the government that grants it, and that, in this case, the questions asked the witness related exclusively to matters of interstate commerce, in respect of which there can be but one sovereign; that his refusal to answer related to his fear of punishment by that sovereign, and to nothing else; and that no answer the witness could make

could possibly tend to criminate him under the laws of any other government, be it foreign or state." (Page 626.)

The distinguishing feature in this regard, between the case of *Brown vs. Walker* and the present case, is that here the questions asked the witnesses do not necessarily relate to interstate commerce at all, but, as before stated, they are a general inquisition into the nature of the trade relations existing between the General Paper Company and the other defendants. The General Paper Company, which, according to the petition is the keystone of the alleged conspiracy, organized for the express purposes thereof, is a Wisconsin corporation; all but two of the other twenty-three defendants are Wisconsin corporations. It may be presumed that some, at least, of the alleged agreements and understandings constituting the so-called conspiracy, if made and entered into, had their inception within the state, and if the complex and many-sided combination charged in the complaint exists, it is fair to presume that its locus is within the state and that much of the trade over which its control and arbitrary powers are exercised, is strictly within the state.

The decision in *Brown vs. Walker* may be fairly summarized as follows:

1. That Brown, the appellant, as auditor of the Alleghany Valley Railway Company, could not be said to have committed any criminal act even under the Interstate Commerce Law. No state law was either involved or suggested which he could be considered to have violated, except that in a dissenting opinion the crimes of embezzlement and of making false entries are used as possible illustrations.

2. That whether or not a crime had been committed by Brown against the laws of the state of Pennsylvania, the immunity clause of the Interstate Commerce Acts would probably be effectual to prevent prosecution under state laws.

3. That whether or not such effect could be given to the immunity clause was a question not material to the decision in that case, in view of the imaginary and unsubstantial character of the danger of state prosecution to which the appellant was exposed.

That the case of *Brown vs. Walker* was not understood by the court as definitely deciding the question as to whether or not the immunity clause of the interstate commerce acts applied to prevent prosecutions under state laws, is indicated by a reference to the decision in a later case. In *Jack vs. The State of Kansas*, recently reported, this court, referring to the case of *Brown vs. Walker* said:

"In that case it was contended on the part of the witness that the statute did not grant him immunity against prosecutions in the state courts, although it granted him full immunity from prosecution by the federal government. The contention was held to be without merit. While it was asserted that the law of Congress was supreme and the judges and courts in every state were bound thereby, and that therefore the statute granting immunity would *probably* operate in the state as well as in the federal courts, yet still and aside from that view it was said that while there might be a bare possibility that the witness might be subjected to the criminal laws of some other sovereignty, it was not a real and probable danger but was so improbable that it needed not to be taken into account." (The italics are ours.)

Again, it was contended below, in line with the suggestion in *Jack vs. Kansas*, that under the authority of *Brown vs. Walker* the protection of the Fifth Amendment does not extend to liability to penalties under state laws, however palpable such liability may be, and consequently it is immaterial whether the immunity clause extends to such penalties or not.

The language of the opinion in *Brown vs. Walker*, which gave rise to this remarkable contention, was the following:

"But even granting that there were still a bare possibility that by his disclosures he might be subjected to the criminal laws of some other sovereignty, that, as Chief Justice Cockburn said in *Queen vs. Boyes*, 1 B. & S., 311, in reply to the argument that the witness was not protected by his pardon against an impeachment by the House of Commons, is not a real and probable danger, with reference to the ordinary operations of the law in the ordinary courts, but 'a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.' Such dangers it was never the object of the provision to obviate." (Page 608.)

It does not appear, in the report of the case, that any specific state law, making the matters in reference to which the questions were propounded, criminal, was pointed out or suggested to the court. The question of possible liability under a state law seems to have been raised and considered merely as a possibility, in the absence of evidence of any such liability. In the present case it is pointed out that there are statutes in the state, in which the suit is pending, making the identical matters to

which the questions relate, criminal under the state law, and the witnesses expressly claim their privilege on account of their liability thereto.

If further argument were needed to suggest a real danger to the witnesses of prosecution under state authority as distinguished from "danger of an imaginary and unsubstantial character having reference to some extreme and barely possible contingency so improbable that no reasonable man would suffer it to influence his conduct," it may be suggested in view of the number of the parties, the nature of the subject matter and the widespread interests affected, including that of the public press, that the widest publicity will be given to the evidence disclosed, and there will be no lack of private interest to incite public action.

"Ordinary operations of the law" include state as well as federal laws. The English Constitution and the protection which it gives to witnesses cover all the law which is administered in England. In proof of this we quote from Daniell's Chancery Practice the following:

"Where the forfeiture or penalty is not of such a nature that the plaintiff can, by waiver, relieve the defendant from the consequence of his discovery, a demurrer will hold; for it is a general rule that no one is bound to answer so as to subject himself to punishment, in whatever manner that punishment may arise, or whatever may be the nature of that punishment: whether it arises *by the Ecclesiastical Law, or by the law of the land*. This rule is not confined to cases in which the discovery must necessarily subject the defendant to pains and penalties, but it extends to cases where it may do so."

1 Daniell's Ch. Pr. 5 Am. Ed., *p. 563.

As showing what is meant by the above reference to punishment under the Ecclesiastical Law, we quote the following from a standard work on criminal law:

"Now, there are criminal offenses cognizable, in England, by the ecclesiastical judges; yet not criminal in precisely the sense of the general common law, but rather as injuring the souls of men. The punishment is ordinarily to pay the costs of prosecution, and do penance; the usual penance being to make confession in the vestry of the church, unless the judge will consent to receive in commutation, 'an oblation of a sum of money for pious uses,' or unless the penalty is remitted on account of ill health, or for some other cause. But obviously, in the absence both of ecclesiastical courts and an

established religion, these offenses and punishments do not exist in this country."

1 Bishop on Criminal Law, Sec. 38.

What is here said about the ecclesiastical law and matters coming within its condemnation and punishment proves that the privilege against self-incrimination in England covers all the law there is; for as both Daniell and Bishop proceed to show, the penalties administered by the ecclesiastical courts were imposed in cases not criminal under the common law of England.

The only exception given by the English rule in any degree analogous to that which would exclude the criminal laws of the states from the operation of the constitutional amendment is that "a defendant cannot refuse to give testimony on the ground that it will expose him to penalties in a foreign country." 1 Daniell's Ch. Pl. & Pr., 5 Am Ed., *p. 567.

Very learned and instructive discussions of the constitutional law as it existed in England and, by transfer, in the American colonies at the time of the adoption of our federal constitution, are to be found in many decisions both in the United States and State reports. None are more learned or more instructive than those in the cases of *Boyd vs. United States*, *Counselman vs. Hitchcock* and *Brown vs. Walker*. It would be superfluous to quote from these, but it is considered that they fully justify the position taken here by the appellants.

At the time of the adoption of the federal constitution the privilege against self-incrimination was a part of the fundamental law of every state, not always expressed in the form of a written constitution, but always recognized as implicitly as though expressed. Before the adoption of the federal constitution this privilege in every state extended to and included every kind of law which was administered within such state. It bound every court and protected every party and witness. After the adoption of the federal constitution and the organization of the national government under it the apprehension began to manifest itself among the people that this and other guarantees of personal liberty might not be regarded as controlling upon the national government. It is true that the first Congress in its judiciary act declared that "the laws of the several states, except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply." This was section 34 of the

judiciary act of 1789, and has since been incorporated into the compiled statutes as section 721. And it is true that under this provision the courts have held that the laws of the several states upon the subject of competency and privilege of witnesses, except where otherwise required or provided by congress, furnish the rules of decision in trials at common law in the courts of the United States; and under the maxim that "Equity follows the law," the same rules are, for the most part, in effect made operative in proceedings in equity suits in the United States courts. It might have been said that section 721 of the Compiled Statutes was sufficient to establish in the federal tribunals the rule of privilege against self-incrimination which prevailed in the state tribunals; but it was realized that what Congress had the power to enact, it had the power to change, and there was no disposition to leave this privilege subject to change in that way. The force of this feeling was realized among the members of the first Congress and the same congress which enacted the judiciary act proposed for adoption by the people of the United States the first ten amendments to the federal constitution.

Now it is said, and truly, that these amendments are operative only upon the federal government and the federal courts; but this does not change the fact that the intention of these amendments was to establish in the administration of national laws and in the administration of justice in the national courts, *not different, but the same* principles which were, apart from these amendments and independently of them, established in the courts of the several states.

The federal government and the federal courts are not now, nor were they then, regarded as a foreign government or foreign courts, and in the exercise of their jurisdiction the courts of the United States have uniformly held that the state governments and the state courts are in no sense to be regarded as foreign to them. The law administered within a state, whether by state courts or by federal courts, and whether enacted by state or national legislature, is the law of that state, binding upon all of its citizens and upon all of its governmental agencies. This principle has been so often stated and upheld by the decisions of this and other courts that it will be sufficient to cite a few of the authorities without quotation from their decisions.

Metcalf vs. Watertown, 153 U. S., 671.

Emery vs. Palmer, 107 U. S., 3.

Ballin vs. Friend Lace Imp. Co., 78 Wis., 404.

Turrell vs. Warren, 25 Minn., 9.

Barney vs. Patterson, 6 Harr. & J., 182.

Thomson vs. Lee County, 22 Ia., 206.

Wandling vs. Straw, 25 W. Va., 705.

St. Albans vs. Bush, 4 Vt., 58.

Macanley vs. Hargroves, 48 Ga., 50.

Williams vs. Wilkes, 14 Pa., 228.

It is apparent, therefore, that the rule, or exception to the rule, relating to the criminal laws of foreign states, is not applicable to the relations between the states and the national government.

It is significant that in the case already cited of United States vs. Saline Bank of Virginia, 1 Pet., 100, where the privilege against self-incrimination was claimed with reference to the criminal laws of Virginia, the decision of the court, the case being one in equity, was not expressly based upon any constitutional provision. The language is:

"It is apparent that in every step of the suit the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

It is impossible to say in reading this decision whether it was based upon the Virginia constitution or upon that of the United States. It is apparently based upon that old equity rule which is the foundation of both and which, it cannot be doubted, is the same under either, and in the courts of either jurisdiction.

Suppose in the same suit, which was one between private parties and relating to civil rights, the privilege had been claimed by way of protection against some penal act of congress: Would not the ruling have been the same? It certainly must have been. But under which constitutional provision, that of the state or that of the United States? Under the provisions of the judiciary act, the law of the state furnished a rule of decision. Under the constitutional amendments the same rule would have been applied. *It cannot be doubted that whether in the federal courts or in the state courts the rule is the same, not different, and equally protects from the danger of self-incrimination persons who may be liable to penalties under state laws and persons who may be liable to penalties under federal laws.* It is difficult to find a justification for any other doctrine.

In *Brown vs. Walker* the court said:

"As the object of the first eight amendments to the constitution was to incorporate into the fundamental law of the land certain principles of natural justice which had become

permanently fixed in the jurisprudence of the mother country, the construction given to those principles by the English courts is cogent evidence of what they were designed to secure and of the limitations which should be put upon them."

161 U. S., 600.

That is to say that the provisions of these amendments are merely the enactment into a constitutional form of the equity and common law rules of evidence and procedure which had become crystalized into an Anglo-Saxon rule of liberty both in the mother country and in the colonies before the adoption of our constitution. The constitutional provision, under the liberal rules laid down by this court for its interpretation, is at least as broad, therefore, as the common law and equity rule of which it is the embodiment.

It was firmly settled under the rules of common law and equity procedure at the time the constitution was adopted that *no person could be compelled to discover any fact, either by producing documents or answering questions, which might subject him either directly or eventually to liability to a penalty or forfeiture, or anything in the nature of a penalty or forfeiture.*

1 Daniell's Chancery Pleading & Practice, 5th Am. Ed., *pp. 562, 563.

2d Story's Equity Jurisprudence, Sec. 1494.

Pomeroy's Equity Jurisprudence, Vol. 1, 202.

Livingston vs. Harris, 3 Paige, 527; affirmed in 11 Wend. 329.

Northrop vs. Hatch, 6 Conn., 361, 363.

Livingston vs. Tompkins, 4 Johnson's Ch. at p. 432 and cases there cited.

Vanderveer vs. Holcomb, 17 N. J. Eq., 91.

Higdon vs. Heard, 14 Ga., 255.

State vs. Talbott, 73 Mo., 347.

Poindexter vs. Davis, 6 Grattan (Va.), 481.

Re. Kip, 1 Paige, 601.

United States vs. National Lead Co., 75 Fed. R., 94.

Newgold vs. American Electrical, Etc., Co., 108 Fed. R., 341.

United States vs. Boyd, 116 U. S., at p. 631.

The doctrine which may be taken as the consensus of the authorities is well stated in *Livingston vs. Harris*, *supra*. That was a suit to compel the defendant to deliver up a usurious note for cancellation and to enjoin proceedings thereon at law. As

to the right of the plaintiff to elicit from the defendant discovery of evidence regarding the usury, the chancellor (Wallworth) said:

"If a discovery was necessary, either to aid him in a defense at law or otherwise, he was also met by another settled principle of this court that it will not extort from the defendant an answer on oath and thus compel him to be a witness against himself, where such answer might subject him to a criminal proceeding or to a penalty or forfeiture or to any loss in the nature of a forfeiture."

"In accordance with these two principles it had become the settled law of the court of chancery, previous to the adoption of the revised statutes, that a defendant was not bound to answer a bill seeking a discovery as to any usurious transaction, where a disclosure of the usury would or might subject him to the forfeiture or loss of the whole or any part of the money actually lent or of the legal interest therein. * * *

The constitution, however, has wisely provided that a party shall not be compelled, in a criminal case, to be a witness against himself, and this principle by the common law was extended to proceedings in civil cases where the witness was called upon to make a disclosure which might subject himself to a forfeiture of penalty or to any loss in the nature of a penalty. It would therefore be inconsistent with this principle of the common law and with the spirit of the constitution to compel a defendant to be a witness against himself where the effect of the disclosure which he was required to make would be to subject him to the forfeiture of money actually loaned and to which no other person had any equitable claim." (3 Paige at p. 533.)

In *Livingston vs. Tompkins*, 4 John. Ch. at page 432, the following language is used by Chancellor Kent:

"There are numerous cases establishing the rule that no one is bound to answer so as to subject himself either directly or eventually to a forfeiture or penalty, or anything in the nature of a forfeiture or penalty." (Citing numerous cases.)

The rule extends to protect a witness who is not a party, as well as to the protection of a party.

Thus in *United States vs. Boyd*, 116 U. S., at page 638, it is said:

"A witness as well as a party is protected by the law from being compelled to give evidence that tends to criminate him or to subject his property to forfeiture." Citing *Queen vs. Newell, Parker*, 269; 1 Greenl. on Evidence, Secs. 451-453.

The cases make no distinction between the right to refuse to

discover the facts in the pleadings or to testify to them upon the trial. Obviously, if the complainant is not entitled to have discovery as to a matter by the written answer of the defendant, the same rule must protect the defendant from being required to testify to the fact on the trial. Thus, in *Henry vs. The Bank of Selina*, 1 N. Y. (1 Comstock) 83, it was held (quoting the head note):

"A witness or a party called as a witness may not only object to testifying to the main fact which would subject him to a penalty or forfeiture, but may also refuse to disclose any one of a series of facts which together would expose him to such penalty or forfeitures."

In the opinion the court said:

"The rule is well settled that a witness is not required to give any answer which will have a tendency to accuse himself of any crime or misdemeanor or to expose him to any penalty or forfeiture, or when by answering a link may be added to a chain of testimony tending to such a result."

In *Counselman vs. Hitchcock* (142 U. S. 547) the court said:

"This provision (the Fifth Amendment) must have a broad construction in favor of the right which it was intended to secure. The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard."

And in *Boyd vs. United States*:

"Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose. It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance." (P. 635.)

We do not believe the court meant to decide, in *Brown vs. Walker*, or that the decision in that case fairly admits of the construction that the protection of the Fifth Amendment against

self-incrimination relates solely to matters cognizable in the federal courts. To thus limit the scope and application of the amendment would be to practically destroy its efficacy.

The criminal jurisdiction of the federal courts is limited to matters made criminal by the acts of Congress, but the great body of the criminal law, for the protection of life and property within the several states, is declared and administered by the states themselves. To say that this entire body of criminal law, including crimes at common law punishable only in the state courts, is excluded from the application of the Fifth Amendment, is practically to make the amendment a nullity. Such a narrow and ineffectual construction of the amendment is contrary to the entire current of the decisions of this court. (*Cases supra.*)

But even if it were true that the Fifth Amendment has no application to penalties which might be incurred under state laws, *the witnesses would still be privileged from discovering any matters which might tend to expose them to penalties or forfeitures, under the common law and by the well established rules and principles of equity, independent of the constitutional provision.*

Note that the immunity clause under consideration does not require the witnesses to answer regardless of whether the matters disclosed may be criminatory or not, but merely provides "that no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify," etc. If therefore, the immunity clause does not extend to relieve against penalties or forfeitures which may be suffered under state laws, a witness, even if not protected against such exposure by the Fifth Amendment, may still claim the protection of the common law. In other words, the common law rule is not changed by the immunity clause, except so far as immunity is granted. If the immunity does not extend to offenses against state laws, then the common law privilege of a witness subject to those laws, to refuse to disclose matters which may subject him to penalties under them, remains unaffected.

B.

Other statutes of the state are as follows:

"Section 1791j. Corporations organized under the laws of this state are prohibited from entering into any combination, conspiracy, trust, pool, agreement or contract intended

to restrain or prevent competition in the supply or price of any article or commodity in general use in this state or constituting a subject of trade or commerce therein, or to control the price of any such article or commodity, to regulate or fix the price thereof, to limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or to fix any standard or figure by which its prices to the public shall be in any manner controlled or established."

"Section 3241. An action may be brought by the attorney general, or by any private party in the name of the state, on leave granted therefor by the Supreme Court upon cause shown, for the purpose of vacating the charter or annulling the existence of any corporation created by or under the laws of this state, except a municipal corporation, whenever such corporation shall :

"1. Offend against any of the provisions of any law by or under which it shall have been created, altered or renewed ; or

"2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers ; or

"3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers ; or

"4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges, or franchises ; or

"5. Whenever it shall exercise franchises or privileges not conferred upon it by law."

"The grounds on which the franchises of corporations may be seized by the state and forfeited consists of a wilful non-feasance or malfeasance, otherwise described as a wilful non-user or misuser of their franchises in matters affecting the interests or right of the public generally."

5 Thompson on Corporations, Sec. 6609.

"For a corporation to combine with other corporations and form a trust, the object of which is to limit production, maintain prices and stifle competition, is such a misuser of its franchises as will entitle the state to demand a judgment ousting it of them where there is a statute prohibiting corporations from entering into such combinations."

5 Thompson on Corporations, Sec. 6627.

See also :

State vs. Easton S. & L. Club, 73 Md., 97.

State vs. Club of Neosho, 44 Mo. App., 86.

It will be the duty of the law officers of Wisconsin, under the statutes and rules of law above quoted, to proceed to forfeit the charters of the defendant corporations if the charges upon which this suit is based are proved, and manifestly the discovery of the facts which the witnesses have been ordered to disclose, if material to plaintiff's case, will tend to subject the various defendant corporations, in which the witnesses are officers and stockholders, to such forfeiture. This liability to forfeiture of charter is as to the corporations a liability to civil death,—the highest penalty the law can inflict upon them; and the forfeiture of their charters must result in the forfeiture by the witnesses of their respective offices and of their stock, which as averred in their respective answers, would involve substantial loss of property value.

The fact that the defendant corporations are engaged in interstate commerce does not remove them from the authority which may be exercised by a state over corporations which it has created: and apparently there is no power on earth which can interfere between the state and a corporation deriving its charter from the state in proceedings to take away its charter.

State vs. C. W. & B. Ry. Co., 47 O. St. 130, 137.

State ex rel vs. Doyle, 40 Wis. 175; S. C. 94 U. S. 535.

In the first of these two cases the action was one of *quo warranto* brought under the state statute of Ohio against a railway corporation engaged in interstate commerce for misuse of its franchise within the state growing out of an alleged unlawful discrimination in rates. Objection to the jurisdiction of the court was taken on the ground that the corporation was engaged in interstate commerce. It appeared in fact that some at least of the transactions complained of were matters of interstate commerce. In the decisions sustaining the jurisdiction the court said as follows:

"No doubt the regulation of interstate commerce belongs exclusively to the national government. But does the controversy now before us, in any proper sense of the term, relate to a regulation of commerce between the states? Does this exclusive right in Congress to regulate interstate commerce preclude any action by a state upon any subject that may incidentally affect such commerce? Certainly a state cannot be compelled to create corporations in aid of, or to facilitate, commerce between the states; but if it does create one capable of engaging in such commerce, and the corporation in fact so engages, is that an emancipation of the corporation from the control of the state? That the power to regulate commerce

between the states cannot safely be pressed to such extreme consequences is, we think, recognized by the Supreme Court in *Robbins vs. Shelby County Taxing District*, 120 U. S. 489. The corporation has received vitality from the state; it continues during its existence to be the creature of the state; must live subservient to its laws, and has such powers and franchises as those laws have bestowed upon it, and none others. As the state was not bound to create it in the first place, it is not bound to maintain it after having done so if it violates the laws or public policy of the state, or misuses its franchises to oppress the citizens thereof.

"For such offenses the state, acting through its legislature and courts, and in the exercise of a sound discretion, may either destroy the corporation entirely by forfeiting its charter or oust it from the wrongful exercise of its powers. And if, instead of or in addition to misusing the franchises actually conferred, it usurps others, the circumstances that the usurped franchises relate to and concern commerce between the states ought not to deprive the state of its visitatorial power. If the state creating the corporation is deprived of this power, none exists elsewhere. 'The government creating the corporation *can alone* institute such a proceeding': (*quo warranto* to adjudge forfeiture of a corporate franchise:) 'since it may waive a broken condition of a compact made with it.' Angel & Ames on Corporations, Sec. 777, and cases cited."

C.

The liability to injunction to which it is the purpose of the suit to subject the appellants is itself a penalty, to-wit: one of the penalties prescribed by the Anti-Trust Act.

The suit in which the evidence is required is in the nature of a criminal proceeding. The illegal and criminal character of the acts against which the entire statute is directed is plainly declared by the first and second sections. The fourth section, under which the suit in question was brought, provides a method of civil procedure to enjoin the violation or the continuance of a violation of the Act; but does not purport to change the criminal character of the statute as declared in the first and second sections. On the contrary, the remedy by injunction is clearly cumulative and is merely an additional method of enforcing a statute which in every aspect is penal in its nature. As said by Mr. Justice Holmes in the case of *Northern Securities Co. vs. United States*, 193 U. S. 401:

"The statute of which we have to find a meaning is a criminal statute. The two sections on which the government re-

lies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a criminal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction."

From this language, although occurring in a dissenting opinion, we think there can be no dissent. Indeed, the criminal nature of the proceeding was recognized by the court in the majority opinion in the case just cited. The fact that the proceeding is civil rather than criminal in form is unimportant.

In *Boyd vs. United States*, 116 U. S. 616, which was a proceeding civil in form to establish a forfeiture of goods under the custom laws, the court said:

"The information, though technically a civil proceeding, is in substance and effect a criminal one. As showing the close relations between the civil and criminal proceedings on the same statute in such cases, we may refer to the recent case of *Coffey vs. United States*, in which we decided that an acquittal on a criminal information was a good plea in bar to a civil information for the forfeiture of goods arising upon the same acts. As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the Constitution and of that portion of the fifth amendment which declares that no person shall be compelled, in any criminal case, to be a witness against himself." (P. 634.)

To the same purport is the case of *Lees et al. vs. United States*, 150 U. S. 476. This was an action brought in the district court of the Eastern District of Pennsylvania for the recovery of \$1,000.00 as a penalty for the violation of an act of Congress prohibiting the importation of aliens under contract to perform labor. One of the allegations of error was that the court compelled one of the defendants to become a witness for the government and furnish evidence against himself. In reference to this this court said:

"This, though an action civil in form, is unquestionably criminal in its nature and in such a case a defendant cannot be compelled to be a witness against himself."

The suit in question is based, not upon a threatened future violation of the statute, but upon an actual and continued violation. It is brought to enjoin a continuance of operations under an alleged combination already formed and in full operation,

distinctly alleged to be in violation of the statute. There can be no question under these circumstances that the proceeding is criminal, or quasi-criminal, in character, and that the essential allegations upon which it is based are criminal acts on the part of the defendants and their responsible officers, agents and directors.

The liability to injunction and to the proceedings prescribed by Section 4 is in the nature of an additional or cumulative penalty provided by the statute as one of the sanctions for its observance. The statute itself being punitive, every sanction which it provides to enforce its observance, is likewise punitive. Such liability to injunction depends wholly upon the statute. There was no such remedy at common law. It has no relation to any actual injury or damage threatened to or which may be sustained by any individual or private interest, but is a liability imposed by statute on the grounds of public policy. It is, therefore, punitive and penal in its nature.

Merchants' Bank vs. Bliss, 35 N. Y. 412, 416.

Each of the witnesses appealing is, or has been, an officer or director of the General Paper Company and all, except Stuart, are or have been officers, directors and stockholders in one or more of the other corporation defendants.

The complaint, after charging that all the defendants have violated the statute by entering into and acting under the unlawful combination, contracts and agreements alleged, prays amongst other things, "that the defendants and each and every one of them, and their *officers, directors, stockholders, agents and servants, and each and every one of them*, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the same," etc. No doubt the injunction prayed for, if granted against the corporations, would be legally binding upon the officers and directors, even if it were not directed against them specifically; but it is significant that the prayer of the complaint seeks to make the appealing witnesses, in terms subject to the penalty of injunction prescribed by the act. If, as we contend, the liability to injunction imposed by the statute, is itself a penalty, it being one of the express purposes of the suit to subject the appealing witnesses by the decree which is sought to that penalty, they are within the very terms of protection afforded by the fifth amendment. It is doubtless sufficient to excuse them from testifying, that the suit in which they are called upon to testify in terms seeks to subject them to the penalties of the relief which is asked; but if the enquiry be material, whether they would be prejudiced

by the decree in fact, we think it must be conceded that the denial to them, as directors and managing officers of defendant companies of the right to carry out existing contracts and continue in established relations conceived to be for the interest of their companies and generally to continue in their offices without restraint, is a legal detriment to them as well as to the company. It may be said that it is no legal detriment to a party to enjoin him from proceeding under an illegal contract or business relation, but this would be begging the question. The illegality of the contracts and relations in question cannot be assumed at this stage of the case. That is the point at issue. The officers and directors have the right to manage and conduct their business, free from restraint, so long as they are guilty of no violation of law. The question is, can they be compelled to testify for the purpose of proving that they are violating the law, and consequently, liable to restraint? No one has a legal right to commit a crime; but everyone has a legal right to refuse to furnish evidence to prove that the course of conduct in which he is engaged is criminal, at least unless he is completely indemnified against the consequences.

Brown vs. Walker, 161 U. S. 591.

D.

The consequences which must result to the appellants from the passing of the decree prayed for in the complaint are in the nature of a forfeiture. They should not be required to furnish the evidence to subject them to such forfeiture.

Each of the appellant witnesses is a stockholder in the General Paper Company. It appears, it is true, that they hold this stock in trust for the different defendant corporations in which they are interested; but the legal title to the stock is nevertheless in the witnesses. Aside from this, each of them, except W. Z. Stuart, is the owner of a substantial stock interest in one or more of the other defendant companies. Alexander is the owner \$60,000 of stock in the defendant John Edwards Manufacturing Company, \$40,000 in the Nekoosa Paper Company and \$25,000 in the Centralia Pulp & Water Power Company. Whiting is the owner of \$100,000 of stock in the Wisconsin River Paper & Pulp Company. Harmon is the owner of \$16,000 of stock in the Centralia Pulp & Water Power Company.

It is alleged in the moving petition upon which the order to show cause was based, amongst other things, that the defendants:

"did in or about the year 1900, in the manner and form mentioned in said petition" (referring to the petition in the suit) "enter into an agreement, combination and conspiracy with each other to restrain the trade and commerce with the several states and control and monopolize said trade and commerce, in this: that the said defendants, save and excepting the General Paper Company, combined and conspired together to restrain and eliminate competition among themselves by and through the organization of a selling agent known as the General Paper Company, another party defendant, which General Paper Company was by various contracts and agreements thereupon made with the said other defendants given full power and control over the product and the disposition thereof of the defendants so contracting with it."

The allegations of the petition are to the effect that the entire business of the General Paper Company rests upon its contract relations with the other defendants, and that the entire business of each of the other defendant companies in the matter of disposing of its product is done through the General Paper Company under contract relations with it, all of which it is the express object and purpose of the suit to establish as illegal because in violation of the statute; and it prays that the General Paper Company be enjoined from acting as sales agent of the other defendants.

The answers of the appellants to the order to show cause in the court below, while denying the unlawful character of said contracts, allege:

"That said contracts and agreements are of great value to said General Paper Company and upon them rests practically its entire business, and that the same are also of great value to and constitute valuable property rights in each of the defendants respectively parties thereto, including the defendant hereinabove named" (the defendants in which the answering witnesses severally own stock).

The answers further allege, by appropriate allegations, that an injunction from carrying out said contracts and agreements such as is prayed for in the complaint, and their virtual annulment thereby occasioned, would result in great injury, damage and loss to the General Paper Company and to the other defendants, parties to such contracts and agreements, including the defendants in which the witnesses respectively are stock-

holders, and to them personally as stockholders in such defendants.

They further allege that to require the appellants to furnish evidence in support of the allegations of the complaint, would be to subject the General Paper Company and the other defendants in which they are respectively interested as officers, directors and stockholders, to forfeiture of their charters under the laws of the State of Wisconsin, and to consequent loss and damage to the corporations and to themselves, including the practical forfeiture of their stock in such corporations.

Further, that the contracts made by the defendant corporations in which the witnesses are severally interested as officers, directors and stockholders, through the General Paper Company as their sales agent, under and pursuant to its agency contracts, which are sought to be declared illegal in said suit, are of great value; that there are a large number of such contracts outstanding under which large sums of money are due to said defendant corporations in which they are interested as officers, directors and stockholders as aforesaid, exceeding in each case the sum of \$10,000, all of which may be uncollectible, forfeited and lost in case the illegal combination alleged in the bill of complaint should be established.

For the purpose of determining the privilege of the witnesses to decline to answer, all of these allegations of fact must of course be taken as true. In fact, they are all undisputed. In view of these allegations it is evident, if indeed it is not apparent from the nature of the suit and the allegations of the complaint, that the establishment of the complainant's case by the decree prayed for must result in the paralysis and consequent destruction of practically the entire business of the defendants as it is now being carried on. The General Paper Company is to be enjoined from continuing to act as sales agent for the other defendants and the latter are to be enjoined from continuing the General Paper Company as their sales agent. The several contracts under which the General Paper Company has been acting as sales agent for the different defendants and under which their business has been transacted for more than four years are to be declared illegal; in other words, the entire foundation of the business of the General Paper Company and of other defendants so far as it depends upon that of the General Paper Company.

In the American & English Encyclopedia of Law, Vol. 13, p. 54, a forfeiture is defined as "A loss of one's rights and interest in his property." In the note it is stated "A fine is a pecuniary penalty and is commonly (perhaps always) to be collected by

suit of some kind. A forfeiture is a penalty by which one loses his rights and his interests in his property," citing *Gosselink vs. Campbell*, 4 Iowa, 300; *Indianapolis vs. Fairchild*, 1 Ind., 318; *Fain vs. United States*, 1 Wyoming, 247. One of the definitions given by the *Century Dictionary* is, "Specifically in law, the divesting of property, or the termination or failure of a right by or in consequence of a wrong, default, or breach of a condition."

To enjoin the carrying out of the contracts existing between the General Paper Company and the other defendants respectively, not for the redress of any private grievance or for the protection of any private right, but solely on the ground of public policy, is in effect a forfeiture of those contracts. It is as much a forfeiture as would be the seizure and deprivation by the government of tangible property deemed inimical to the public good, as for example machinery designed for counterfeiting, or of goods seized for violations of the customs and internal revenue laws.

So also the deprivation on the ground of public policy of the right of the defendant companies, their officers and directors, to continue to carry on their business as already established and in accordance with their wishes, is a forfeiture not only of property but of personal liberty. The forfeiture of property, by the annulment of contracts and deprivation of the fruits of existing contracts and business relations, is evident. The forfeiture of personal liberty is equally obvious.

The liberty of contracting is both a liberty and a property right, of which one cannot be properly deprived without due process of law.

Ritchie vs. The People, 155 Ill., 98.

The liberty guaranteed by the Constitution includes the right to freely buy and sell, make contracts and have them enforced, as others may.

State vs. Loomis, 115 Mo., 307.

Liberty, as understood in this country, includes also the right of a person to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade and occupation.

In Matter of Jacobs, 98 N. Y., 98.

It may be said that any suit for an injunction to prevent the execution of a contract, or a party's freedom of action in any threatened course of conduct would involve the same question, but this, we submit, is not true. The distinction is between a suit by a private party to enforce a private right or to redress a private wrong, and a suit at the instance of the government to restrain the freedom of action of particular parties on the

ground of public policy for the public welfare. The first relates merely to an adjudication of private right between private parties, as between whom the state stands as an impartial arbiter; the second is the exercise of governmental power to impose restraints upon the liberties of private parties in the interest of public policy. *In such case, whatever may be the form of the proceeding, every reason for which the limitations upon the inquisitorial powers of government were designed is present.* This seems perfectly obvious.

The power of Congress to interfere with and restrain the ordinary freedom of contract in the exercise of its legitimate powers is not attacked by this argument. What we do claim is that in a suit by the United States, as complainant, which contemplates as its object a restraint upon the liberties of particular citizens or the imposition of any penalty or forfeiture, the parties to be affected should not be required to furnish the evidence against themselves to justify the restraint, penalty or forfeiture which it is the object of the suit to impose.

To say that the business of defendants and of the witnesses, as stockholders and officers, is unlawful, and that they have therefore no right to continue in it, does not answer this objection; for before their right to carry on their business can be denied, or forfeited, it must be shown that it is unlawful. This the government is at liberty to do in any way it can, subject to the restrictions in favor of personal liberty. But to compel the defendants or the appellant witnesses to furnish the necessary proof is to compel them to furnish the evidence which may subject them to a penalty or forfeiture.

In the same way no man has a right to import dutiable goods without paying duties; or to distill spirits or brew malt liquors without paying the internal revenue taxes; or to have in his possession tools or materials for purposes of counterfeiting or safe-breaking, or to maintain a public nuisance. But he cannot be compelled himself to furnish the evidence which will sustain a forfeiture of goods, or distilleries, or tools, or other property. His possession and use of all of these must be shown to be criminal, and by other testimony than his own, before his right to possess or use his own property as he pleases and in his own way can be taken from him by authority of law.

E.

The witnesses were entitled to decline to answer not only on the ground of personal privilege, but also on the ground that their answers would be the answers of the General Paper Company and the other defendants whose officers and directors they were, and might tend to subject said defendants to fines, penalties and forfeitures and to loss or damage in the nature of a forfeiture.

The moving petition shows that the appellant witnesses were called as officers and directors of the General Paper Company. Thus, it is alleged:

"That the first witness called for examination by counsel for the petitioner was L. M. Alexander, secretary and treasurer of the General Paper Company, president of the defendant, The John Edwards Manufacturing Company, secretary and treasurer of the defendant, The Nekoosa Paper Company, and secretary of the defendant, Centralia Pulp & Water Power Company. That the second witness called for examination by counsel for the petitioner was George A. Whiting, first vice-president of the defendant, General Paper Company, and president of the defendant, Wisconsin River Paper & Pulp Company. That the third witness called for examination by counsel for the petitioner was W. Z. Stuart, second vice-president of the General Paper Company."

The answers are all to the effect that such knowledge as the witnesses have of the affairs of defendants came to them in their capacity as officers, in the performance of their duties as such.

The General Paper Company was permitted to intervene in the proceedings against their officers, the appealing witnesses, and to join with them in their objections to answering the questions.

A corporation can speak and act only through its proper officers and agents, within the scope of their respective duties. If the officers of a corporation can be compelled to testify against the corporation in a matter involving the forfeiture of the charter, property and business of the corporation, then corporations are entitled to no protection either under the Constitution or the common law against self-crimination or inquisitorial proceedings to forfeit their property.

In *Covington Turnpike Co. vs. Sanford*, 164 U. S., 578, at page 592, this court said:

"It is now settled that corporations are persons within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, as well as a denial of the equal protection of the laws. *Santa Clara County vs. Southern Pacific Railway Co.*, 118 U. S., 394; *Pembina Mining Co. vs. Pennsylvania*, 125 U. S., 181, 189; *Minneapolis & St. Louis Railway vs. Beckwith*, 129 U. S., 26; *Charlotte, &c., Railroad vs. Gibbes*, 142 U. S., 386, 391."

The equal protection of the laws, it would seem, must include the right to be protected from self-incrimination through inquisitorial proceedings against the officers and directors, through whom the corporation must act and who are to all legal intents and purposes the *alter ego* of the corporation.

In *Louisville, &c., Railway Co. vs. Louisville Trust Co.*, 174 U. S., 552, at page 573, this court said:

"A corporation, though legally considered a person, must perform its corporate duties through natural persons and is impersonated in and represented by its principal officers, the president and directors, who are not merely its agents, but are, generally speaking, the representatives of the corporation in its dealings with others."

There seems to be a singular dearth of cases directly in point, but such as we have been able to find bearing upon the question are to the effect that an officer cannot be compelled to testify to matters tending to subject his company to a penalty or forfeiture.

State vs. Simmons Hardware Co. (Mo.) 15 L. R. A., 676.

Davis vs. Lincoln National Bank, 4 N. Y. Sup., 373.
Bank of Oldtown vs. Houlton, 21 Me., 502.

That the answers, if material to the case of the government, would tend to subject the defendant companies to penalty and forfeitures has been sufficiently indicated in the previous argument.

It may be contended that if the witnesses speak for the corporations which they represent, in so far as their answers may tend to subject either them or their companies to penalties or forfeitures within the meaning of those terms as used in the fifth amendment, both the witnesses personally and the corporations which they represent are relieved from such liability by the immunity clause of the act of Congress which purports to relieve the witness or party furnishing the testimony from lia-

bility to penalties or forfeitures concerning the transactions, matters or things to which the testimony relates. This contention, we submit, is fully met by the argument here presented to the effect that the immunity clause is not applicable and can not extend to relieve either the witnesses or the corporations from certain phases of the liability to penalties or forfeitures, to which any answers material to the case of the government would tend to subject them.

IV.

QUESTIONS OF PRACTICE.

(1) **Appealability of Orders.**

The act of March 3, 1891, creating the circuit courts of appeals and defining and regulating the jurisdiction of the courts of the United States, contains the following sections:

"Sec. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:

"In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

"From the final sentences and decrees in prize causes.

"In cases of conviction of a capital crime.

"In any case that involves the construction or application of the Constitution of the United States.

"In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

"In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

"Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases.

"Sec. 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or writ of error final decision in the district court and the existing circuit courts in all cases other than those pro-

vided for in the preceding section of this act, unless otherwise provided by law."

1 Comp. Stats. 1901, pp. 549, 550.

The act of February 11, 1903, to expedite the hearing and determination of suits in equity under the anti-trust act of 1890 and the Interstate Commerce Act of 1887, provides:

"Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts wherein the United States is complainant, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

Comp. Stats. 1901, Supp't for 1903, p. 376.

In appealing from the order of the circuit court we have followed the practice indicated in the two cases of Interstate Commerce Commission vs. Brimson, 154 U. S., 447, and Interstate Commerce Commission vs. Baird, 194 U. S., 25. In these cases the Interstate Commerce Commission appealed to this court from orders of the circuit court denying its application for an order to compel witnesses to answer questions and produce books and papers upon an investigation conducted by the Commission under the Interstate Commerce Act. In each case it was held that the application by the Interstate Commerce Commission made a "case" and that the order denying the application was a final order and therefore appealable.

The two cases cited differ from the present ones only in this: that no action was there pending in any circuit court to which the proceedings to compel the testimony of witnesses and the production of books and papers could be said to be ancillary. Otherwise, however, the proceeding itself was in every substantial respect the same as that adopted in the present cases. There were similar pleadings, by petition and answer, appearances of counsel, evidence, hearings, and orders based upon all of these. And the decision of this court—that any order made by the circuit court upon applications under Section 12 of the Interstate Commerce Act, whether such order denied the petition of the Interstate Commerce Commission or required the witnesses to appear and answer questions and produce books and papers, would be a final order conclusive of the rights of the parties and therefore reviewable by the Supreme Court on appeal—seems to be entirely applicable to the present cases.

In the opinions the following statements are made:

"The proceeding is one for determining rights arising out

of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. * * *

"We are of opinion that a judgment of the circuit court of the United States determining the issues presented by the petition of the Interstate Commerce Commission and by the answers of appellees, will be a legitimate exertion of judicial authority in a case or controversy to which, by the Constitution, the judicial power of the United States extends. And a final order by that court dismissing the petition of the Commission, or requiring the appellees to answer the questions propounded to them, and to produce the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which may be enforced by judicial process."

Interstate Com. Com. vs. Brimson, 154 U. S., 487, 489.

"This court has held that a petition filed under Section 12 of the Interstate Commerce Act (U. S. Comp. Stat. 1901, p. 3162) against a witness duly summoned to testify before the Commission, to compel him to testify or to produce books, documents, and papers relating to the matter in controversy, makes a case or controversy to which the judicial power of the United States extends, *Interstate Commerce Commission vs. Brimson*, 154 U. S., 447. * * * The present proceeding is not merely advisory to the Commission, but, as was said in *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447, a judgment rendered will be a final and indisputable basis of action as between the Commission and the defendant, and furnish a precedent for similar cases. While it has for its object the obtaining of testimony in aid of proceedings before the Commission, it is evident that important questions may be involved touching the power of the Commission and the constitutional rights and privileges of citizens. Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort."

Interstate Commerce Com. vs. Baird, 194 U. S., 38, 39.

Appellate jurisdiction under the act of 1891 is conferred in "cases" where the proper subject for review arises. The question: What is a case? is considered in the opinions just quoted, in the Baird and Brimson cases. In the latter reference is made to *Osborn vs. Bank of the United States*, 9 Wheat., 738, 819, where Chief Justice Marshall, referring to the clause in the fed-

eral constitution which extends the judicial power "to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority," says:

"This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case and the constitution declares that the judicial power shall extend to all cases arising under the constitution, laws and treaties of the United States."

In *Little York Gold Washing & Water Co. vs. Keyes*, 96 U. S., 199, Mr. Chief Justice Waite in his opinion used the following language:

"The attempt to transfer this cause was made under that part of Section 2 of the Act of 1875 which provides for the removal of suits 'arising under the constitution or laws of the United States.' In the language of Chief Justice Marshall, a case 'may truly be said to arise under the constitution or a law of the United States whenever its correct decision depends upon the construction of either' (*Cohens vs. Virginia*, 6 Wheat., 379); or when 'the title or right set up by the party may be defeated by one construction of the constitution or law of the United States, or sustained by the opposite construction' (*Osborn vs. Bank*, 9 Wheat., 822)."

And in a case in the circuit court of appeals it is said:

"The Supreme Court has not placed upon the words 'final decree,' respecting the right of appeal, a strict and technical sense, but has given them a liberal and reasonable construction."

Eau Claire vs. Payson, 107 Fed. Rep., 552, 557.

The objection—if such an objection could be made—that these proceedings are merely incidental to a suit in equity pending in the circuit court of the Minnesota district, in another circuit, might be fully met by the acknowledged rule that there may be more than one final order and more than one appeal in the same suit.

Trustees vs. Greenough, 105 U. S., 527.

Tuttle vs. Claffin (C. C. A.), 88 Fed. Rep., 122.

Eau Claire vs. Payson (C. C. A.), 107 Fed. Rep., 552, 557.

Rouse vs. Letcher, 156 U. S., 47, 50.

(2) Rule as to Ancillary Proceedings Applies.

But these proceedings are not properly incidental, but collateral, having a distinct and independent character. They belong to the class known as ancillary, in which the form is determined by the circumstances of each case. So far as the question of appealability goes, they are subject to the same rules as original and independent actions. This is clearly proved by the numerous cases defining the nature of ancillary proceedings, and those in which appeals and writs of error have been entertained in such proceedings. A few only of these need be cited.

Krippendorf vs. Hyde, 110 U. S., 276, 280, 287.

Freeman vs. Howe, 24 How., 450, 460.

Christmas vs. Russell, 14 Wall., 69, 80.

Rouse vs. Letcher, 156 U. S., 47, 50.

Stewart vs. Dunham, 115 U. S., 61, 64.

Carey vs. Houston, etc., Ry. Co., 161 U. S., 115, 126, 127.

Pope vs. Louisville, etc., Ry. Co., 173 U. S., 573.

The present proceedings have all the distinguishing characteristics of any suit in equity or action at law. They have their own parties—who are not the same as in the suit of which they are said to be incidents—appearing by their own counsel; they have their own pleadings and their own issues, upon which evidence was taken and hearings had; the orders appealed from contain all the relief which was asked for and are final and conclusive upon all the questions involved in the controversy before the lower court and upon all the rights of parties which were at stake in that controversy; and, what is the conclusive test, nothing remains to be done by the lower court, if its order should be sustained, except to enforce it.

For the test of finality as to any particular order, under the decisions of this court, is this: That an order, to be appealable, or final for the purposes of appeal, must be conclusive upon the merits and must leave the matter in controversy in such a condition that if there be an affirmance here the court will have nothing to do but to execute the order it has already entered.

Bostwick vs. Brinkerhoff, 106 U. S., 3.

St. L. & C. R. Co. vs. South. Expr. Co., 108 U. S., 24.

Winthrop I. Co. vs. Meeker, 109 U. S., 180.

Mower vs. Fletcher, 114 U. S., 127.
 Trustees vs. Greenough, 105 U. S., 527, 531.

(3) Proceedings Civil, Not Criminal.

The same objection has been made in a somewhat different form in this way: that no rights can be said to have been finally determined until there has been an adjudication in contempt; and it is said that the proceedings in the circuit court were simply preliminary to proceedings for an adjudication in contempt.

To this it seems a sufficient answer to say that the orders appealed from did finally determine the rights of the parties to the proceedings; rights of great importance to them and depending for their validity upon the construction of the Constitution of the United States. There are many other final orders a violation of which may result in punishment for contempt. That is true of all final decrees mandatory or injunctive in their nature; but it never has been held in such cases that an injunctive decree is not final because it may be disobeyed, or that there is no right of review until there has been a disobedience and a punishment for contempt.

That the proceeding in the court below was a civil proceeding is apparent from the fact that appeals were entertained in similar proceedings in the Baird and Brimson cases, and from the fact that the suit to which they are ancillary is a civil proceeding. If the order made by the court below is not a final order, and if no other order therein can be considered a final order prior to an adjudication and punishment for contempt, then the proceeding is in its nature wholly unique. There is no other civil proceeding where it is necessary in order to obtain a right of review of a final order that the party against whom the order runs must do something which will subject him to criminal punishment.

(4) Right of Appeal to the Supreme Court.

In the Brimson and Baird cases already cited the words "final decree" in the act of February 11, 1903, were held to include the orders appealed from by the Interstate Commerce Commission. That, however, was under a special proviso contained in the act of February 19, 1903, U. S. Comp. Stat. 1901, Supplement of 1903, p. 365, extending to proceedings before the Inter-

state Commerce Commission the provisions of the act of February 11, 1903.

Those cases may here be considered in point in which it has been held that the final order or decree in ancillary proceedings is governed by the same rules, in respect of appeals to the Supreme Court, as the decree in the principal suit.

Pope vs. Louisville, Etc., Ry. Co., 173 U. S., 573.

Carey vs. Houston, Etc., Ry. Co., 161 U. S., 115.

Rouse vs. Letcher, 156 U. S., 47.

In view of the provisions and requirements of the act of February 11, 1903, these appeals were perfected and the record returned to this court within sixty days—in fact, within thirty days—from the dates of the orders appealed from.

If, however, there is any question whether the act of February 11, 1903, applies to appeals in such cases as the present, there can be no doubt of the right of appellants to obtain a review of the orders appealed from by direct appeal to the Supreme Court under the provisions of Section 5 of the act of March 3, 1891.

Loeb vs. Township Trustees, 179 U. S., 472.

W. U. Tel. Co. vs. A. A. R. R. Co., 178 U. S., 239.

Penn. Mut. L. Ins. Co. vs. Austin, 168 U. S., 685.

The appellants in their answers fully and clearly set out the grounds upon which their right of appeal under the act of March 3, 1891, must rest, planting themselves squarely upon the protection of the federal Constitution and bringing themselves within the rulings of this court contained in the three cases last cited.

(5) Appeal of General Paper Company.

The General Paper Company is a defendant in the principal suit pending in the circuit court of the district of Minnesota. The other appellants here were subpoenaed as officers of the General Paper Company and the questions which they were asked and refused to answer and the books and papers which they were required and refused to produce upon the hearing before the examiner all related to the business of the General Paper Company. Whether those questions are to be answered and whether those books and papers are to be produced is a matter as nearly affecting the interests of the General Paper Company as those of the other appellants. It may be true that the other appellants could obtain a review of the legality of the order made by the court below by taking a writ of error to a

subsequent order adjudging them in contempt in case of disobedience; but from such other order, purely criminal and personal in its nature, the General Paper Company could not take an appeal. If it is to be heard upon the question of its rights it must be heard upon its appeal from the order already entered. It was permitted to become a party to the proceedings below; as a party it filed an answer in those proceedings; and as a party it appeals from the orders made in them.

As bearing upon the propriety of its intervention we refer to the cases which hold that a person not an original party to a suit, such as a bondholder or stockholder in a corporation-mortgagor or a purchaser at a foreclosure sale, may intervene for the sake of protecting his interests and may appeal from a decree which affects them.

Williams vs. Morgan, 111 U. S. 684, 698, 699.

Richardson vs. Green, 133 U. S. 30.

Kneeland vs. American Loan Co., 136 U. S. 89.

Davis vs. Mercantile Trust Co., 152 U. S. 590, 593.

Central Trust Co. vs. Cal. & N. R. R. Co., 110 Fed. Rep. 70.

(6) Upon These Appeals Not Only the Constitutional Questions But all Other Questions Raised by the Assignments of Error Can Be Determined by this Court.

Horner vs. United States, 143 U. S. 570, 577.

Chappell vs. United States, 160 U. S. 499, 509.

Penn Mut. L. Ins. Co. vs. Austin, 168 U. S. 685, 695.

Loeb vs. Township Trustees, 179 U. S. 472, 481.

Davis & Farnum Mfg. Co. vs. Los Angeles, 189 U. S. 207, 216.

Field vs. Barber Asphalt Co., 194 U. S. 618, 620.

(7) Assignments and Specifications of Error.

The specifications of error are copies of the assignments of error. They point out the particular respects in which the orders appealed from are claimed to be erroneous, without going into the reasons for such claim, and they refer to the pages of the record where the alleged errors appear.

Supreme Court Rules XXI, XXXV.

Vider vs. O'Brien, 62 Fed. Rep. 326.

Lincoln Sav. Bank & S. D. Co. vs. Allen, 82 Fed. Rep. 148.

Hoge vs. Magnes, 85 Fed. Rep. 355.

Nat'l Cash Reg. Co. vs. Leland, 94 Fed. Rep. 502.

A. T. & S. F. R. Co. vs. Mulligan, 67 Fed. Rep. 569.

McFarlane vs. Golling, 76 Fed. Rep. 23.

Andrews vs. Nat'l Foundry & Pipe Works, 76 Fed. Rep. 166.

A. T. & S. F. R. Co. vs. Meyers, 76 Fed. Rep., 443.

For these reasons the appellants ask that the orders appealed from may be reversed.

Respectfully submitted,

JAMES G. FLANDERS,

CHARLES F. FAWSETT,

Counsel for Appellants.



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1905.

Nos. 381, 382, 383, 384.

LEWIS M. ALEXANDER et al., *Appellants*,

vs.

THE UNITED STATES.

No. 385.

E. T. HARMON et al., *Appellants*,

vs.

THE UNITED STATES.

Nos. 490, 491, 492.

BENJAMIN F. NELSON et al., *Plaintiffs in Error*,

vs.

THE UNITED STATES.

**Statement of Facts and Points on Behalf of
Appellants.**

The principal proceeding, out of which all of these cases arise, was commenced by a petition filed by the United States in the Circuit court for the district of Minnesota. In that case, the United States was complainant and the General Paper Company and about twenty-three companies, which owned and operated mills for the manufacture of paper, were made parties defendant. The

Manufacturers Paper Company was also made a party defendant, but as to it, the petition was subsequently dismissed on motion of the complainant.

The appellants Alexander, Whiting and Stuart were and (other than Stuart) are officers of the General Paper Company; Alexander being its secretary, Whiting its first vice-president and Stuart its second vice-president and general manager. Alexander was and is also president of the John Edwards Manufacturing Company and Whiting was and is president of the Wisconsin River Paper & Pulp Company.

The appellant Harmon was and is a director of the General Paper Company; president and manager of the Grand Rapids Pulp & Paper Company, and a stockholder in the Centralia Pulp and Water Power Company.

The plaintiff in error Nelson was and is a director of the General Paper Company and the president of and a director in the Hennepin Paper Company. The plaintiff in error Barsard was and is a director in and the manager and treasurer of the Itasca Paper Company. The plaintiff in error McNair was and is a director in and the general manager of the Northwest Paper Company.

All of the companies with which the various appellants and plaintiffs in error are connected, are made parties defendant to the petition above mentioned.

By this petition, which is the foundation of the subsequent proceedings out of which these appeals and writs of error arise, it was charged by the United States that the General Paper Company, together with the other corporations referred to, was guilty of conspiracy in violation of the so-called Sherman or Anti-trust Act of 1890.

The petition charged that each of the several corpora-

tions named therein was engaged in manufacturing news print, manilla, fibre and other papers in the states of Wisconsin, Minnesota and Michigan, prior to the month of May in the year 1900, and in selling and shipping the products of their mills to dealers, newspapers and other customers in divers states of the Union; that the defendant companies, at that time, comprised substantially all of the manufacturers of paper in the territory referred to.

That in or about the month of May, 1900, certain of the defendant companies, in violation of the Act of 1890, entered into an agreement, combination and conspiracy with each other to restrain trade and commerce and control, regulate and monopolize said trade, and in conjunction and alliance with other defendants who subsequently joined in such agreement, combination and conspiracy, do now control, regulate, monopolize and restrain the trade and commerce, not only in the manufacture of news print, manilla, fibre and other papers, but also in the distribution, sale and shipment thereof among and throughout the states of the Union and all states west of the Mississippi River, by means of, and in the following manner, to wit:

That on or about the 20th day of May, 1900, said defendants caused to be organized under the laws of the state of Wisconsin a corporation styled the General Paper Company, with a capital stock of one hundred thousand dollars (\$100,000) divided into one thousand shares, which were distributed among and are now owned by the other defendants in the suit, in proportion to their average daily output; which corporation is, by its articles of incorporation, authorized to become, as its principal business, the sales agent of any and all kinds of paper

and paper products, and any and all merchandise manufactured from paper or paper products by mills in Wisconsin and elsewhere; that in pursuance of a common plan and understanding, each of the defendants entered into a contract and agreement with the General Paper Company, making it the exclusive selling agent of their papers and paper products, conferring upon it absolute power to control and restrict the output of their mills, fix the price of all paper sold throughout the states aforesaid and determine to whom, and the terms and conditions upon which, paper shall be sold and into what states and places it shall be shipped and what publishers and other customers each mill shall supply; that thereafter, other companies, also made defendants to said petition, joined in said agreement, combination and conspiracy.

That by virtue, and through the instrumentality of the agreement, combination and conspiracy described, all competition in the manufacture, sale and distribution of news print, manilla, fibre and other papers in the states described, and in all states west of the Mississippi River, has been suppressed and the price of all paper products greatly increased.

The petition prays for a decree that the alleged combination or conspiracy described therein is unlawful and in derogation of the common rights of the people and in violation of the Act of 1890; and that the defendants, and each of them, their officers, directors, stockholders, agents and servants be perpetually enjoined from doing any act for the purpose of carrying out the same and particularly that the General Paper Company be enjoined from acting as sales agent, and fixing the price at which paper of the other defendants shall be sold and determining to whom it shall be sold, and that each of the

other defendants be enjoined and restrained from continuing said arrangement with the General Paper Company, and from making it the exclusive sales agent of their products. (printed record in 381, p. 15, *et seq.*)

All of the defendants, except the Rhinelander Paper Company, joined in an answer to this petition (and, subsequently, the Rhinelander Paper Company filed a separate answer).

The answer admits that prior to the month of May, 1900, the defendants were competing with each other in the sale and shipment of news print, manilla, fibre and other paper throughout the territory mentioned in the petition and alleges that they have ever since continued to so compete and are now so competing. The defendants deny that they comprise substantially all of the manufacturers of paper in the territory described in the petition, but on the contrary allege that there are now and have been, since prior to the year 1900, a number of other manufacturers of paper in said territory, competing with each other and with the defendants named in said bill.

They deny that they or any of them at any time entered into any agreement, combination or conspiracy with each other, or with any person or corporation whatever, to restrain the trade or commerce among the several states, or among any states whatever, or within any state whatever, or to control or monopolize said trade or commerce, and deny that they have ever, at any time, made, formed or entered into any agreement, combination or conspiracy, and deny that they or any of them do now control, monopolize or restrain the trade and commerce between any states whatever or within any state, either in the manufacture of news print, manilla, fibre or other paper, or in

the distribution, sale or shipment thereof among or throughout the states of the Union, or any states whatever, or within the limits or borders of any state whatever.

They admit that on or about the 26th day of May, 1900, the General Paper Company was organized under the laws of the state of Wisconsin, with a capital stock of \$100,000, divided into 1,000 shares, which corporation, by its articles of incorporation, was authorized to become the sales agent for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper or paper products.

It is admitted by the answer that thereafter each of the defendants entered into a contract with the General Paper Company, constituting the latter its exclusive selling agent for a definite period, specified in such contract, to sell certain specified grades or descriptions of paper manufactured by the other party to such contract.

But it is denied that any defendant, by such contract or otherwise, ever conferred upon the General Paper Company the power to control or restrict the output of the defendants' mills so contracting, or to fix the price of all, or any, paper sold throughout the states aforesaid, or to determine to whom or upon what prices or conditions the paper manufactured by such mills should be sold, or into what states or places it should be shipped or what publishers or other customers each mill should supply.

The defendant alleges that under such contracts, it was made the duty of the General Paper Company to use its best efforts to keep the mill or mills owned or controlled by the other party to each of such contracts supplied with orders for paper at the best prices reasonably obtainable, and to submit all orders so obtained to the

mill for which the same was taken, for its approval or rejection, and to transmit all orders received by or offered to it for a particular mill to the mill selected by the customer for the approval or rejection of such mill, to the end that each of such mills might be supplied with orders to the full extent of its capacity and the demands of the trade supplied, in the most prompt and efficient manner possible. (printed record in 381, p. 22, *et seq.*)

The Rhinelander Paper Company by its separate answer also denies any agreement, combination or conspiracy between it and any of the other defendants to the bill to restrain trade or commerce among the several states, or to control, regulate or monopolize trade or commerce therein.

It denies that the defendants, or any or either of them, conferred any power upon the General Paper Company to control or restrict the output of its mills; denies that the General Paper Company is authorized to fix the price at which paper is to be sold, or that the General Paper Company has the right to determine to whom and upon what terms and conditions its paper shall be sold, or into what states it shall be shipped, or to whom it shall be shipped; and alleges and avers that while it is the business of the General Paper Company to solicit orders for paper and make sales thereof, and obtain reasonable prices therefor, all orders taken by the General Paper Company for said defendants are subject to its approval, and it has the right to reject the same for inadequacy of price, or lack of sufficient standing on the part of the purchaser, or for any other good or sufficient reason. (printed record in 381, p. 30.)

A general replication was filed on all of the answers, and subsequently an order was entered appointing Robert

S. Taylor special examiner with power and authority according to the rules and practice in such cases made and provided, to hold hearings and receive testimony in behalf of either party at such times and places, within or without the district of Minnesota, as he may designate and appoint.

Up to this point the proceedings so far as they affect the several appellants and plaintiffs in error are alike as to each, but from this point forward the proceedings out of which these appeals and writs of error arise differ and may be divided into three groups, as follows:

First. The proceedings out of which the appeals of Alexander, Whiting, Stuart and the General Paper Company, being Nos. 381, 382, 383 and 384, respectively, arise.

Second. The proceedings out of which the appeal of Harmon and of the General Paper Company, being No. 385, arises.

Third. The proceedings to review which the writs of error of Nelson, Bossard and McNair, being Nos. 490, 491 and 492, respectively, were sued out.

(1)

As to group one the proceedings were as follows:

The special examiner appointed a hearing before him in the city of Milwaukee in the Eastern District of Wisconsin, and thereupon the United States on the 4th day of May, 1905, filed its petition in the Circuit court of said Eastern District of Wisconsin praying for writs of *subpoena duces tecum* requiring the appellants Alexander, Whiting, Stuart and others to appear before said examiner and produce certain books and papers.

This petition after briefly setting forth the issues in the

case, the appointment of such special examiner and the designation by him of the time and place in the city of Milwaukee for the taking of testimony, states:

"Fourth. Your petitioner further states that in order fully to determine the nature and effect of such combination and conspiracy referred to in the petition, and satisfactorily and by competent and material evidence to establish the truth of the averments of said petition in that regard, it is proper, material and necessary to have summoned before the said special examiner at the hearing above mentioned, the following witnesses, and to have produced in evidence and laid before the court for its inspection, the various papers, books and documents hereinafter particularly described, in the possession and under the control of said witnesses respectively." (printed record in 381, pages 2 and 3.)

This is the only allegation in the petition respecting the existence of the papers, books and documents called for, or of the nature of their contents, or having the slightest tendency to show that they contained entries material to the issues.

The petition then prays for writs of *subpoena duces tecum* directed to appellants Alexander, Whiting, Stuart and others and requiring them to attend before the special examiner on May 16, 1905, to give evidence and to bring with them the following books and papers, viz.:

"All written contracts or agreements made and entered into by and between the above named defendant General Paper Company, and any or all of the other above named defendants in said cause, between the 1st day of May, 1900, and the present time, showing or in any way tending to show the terms and conditions upon which the said defendant General Paper Company sells or controls, or in any way deals

in or has sold or controlled, or in any way dealt in, the product of the said other defendants or each or any of them, between the said 1st day of May, 1900, and the present time.

"All stock books, stock ledgers and any and all other books of the said General Paper Company showing the ownership and distribution of the stock of said General Paper Company, from the time of its organization to the present time; and also all books or papers showing the manner and proportions in which the earnings of said defendant General Paper Company have from the time of its organization to the present time been divided and distributed.

"Any and all books, written agreements or papers relating to or in any way bearing upon the control of the defendant General Paper Company, from the time of its organization to the present time, over the output of any or all of the other above named defendants, whether said control consists or has consisted in restrictions upon the quantity of paper of any kind or description produced or to be produced, or in designating the style, brand or quality of paper produced or to be produced by the said other defendants or any of them.

"Any and all books, papers, documents and correspondence in the possession or under control of the said witnesses, either individually or *as officers of the defendant* General Paper Company, relating to the manufacture of that certain grade of paper known as butcher's fibre, and particularly correspondence between the defendant General Paper Company and E. A. Edmonds, formerly of the Falls Manufacturing Company, Oconto Falls, Wisconsin, and now of the Rhinelander Paper Company, Rhinelander, Wisconsin, bearing upon the manufacture and sale of, and the distribution and apportionment of losses arising from the manufacture and sale of, butcher's fibre.

"Any and all correspondence—letterpress copies,

if any, of correspondence sent, as well as original letters or papers received—between the said defendant General Paper Company, and each and all of the other defendants, showing the terms and conditions upon and under which the said defendant General Paper Company has from the time of its organization to the present time sold or disposed of, and does sell or dispose of, the product of the said other defendants; it being not intended hereby to require the production of business communications passing between the parties in the ordinary course of buying and selling, such as letters merely enclosing remittances, making quotations of prices, or directing shipments to be made." (printed record in 381 pp. 3-4.)

Thereupon an *ex parte* order was entered directing *subpoenas* to issue as prayed in the petition. (pr. rec., 34.)

Afterward, on May 12, 1905, the United States filed an additional petition, which, after reciting the issues in the cause and the appointment of the examiner, contained the following:

"Fourth. Your petitioner further states that in order fully to determine the nature and effect of said combination and conspiracy referred to in the petition, and satisfactorily and by competent and material evidence to establish the truth of the averments of said petition in that regard, it is proper, material and necessary to have summoned before the said special examiner at the hearing above mentioned, the following witnesses, and to have produced in evidence and laid before the court for its inspection, the various papers, books and documents hereinafter particularly mentioned, in the possession and under the control of said witnesses respectively; and in this connection your petitioner avers that the

above named defendant General Paper Company has, between the first day of May, 1900, and the present time, from time to time made and entered into certain contracts with the publishers of nearly all of the leading newspapers in the middle and western states for the furnishing by said General Paper Company, upon the terms and conditions in said contracts stated, to the said publishers, of news print or roll print paper required by the said publishers in the publication of their respective newspapers; that the said contracts were all executed in duplicate, and one copy of each thereof duly executed by the respective parties thereto was retained by, and is now in the possession of the said defendant General Paper Company; that the said contracts are competent and material evidence bearing upon the issues in the said cause.

"Wherefore, your petitioner respectfully prays that an order may issue, directing the clerk of the Circuit court of the United States for the Eastern District of Wisconsin to issue under the seal of said court, and to sign and attest, *subpoenas duces tecum* as follows:

"To L. M. Alexander, individually and as secretary and treasurer of General Paper Company, residing at Milwaukee, Wisconsin; and to

"John A. Davis, individually and as general sales manager of General Paper Company, residing at Chicago, Illinois, directing them and each of them, to be and attend before Robert S. Taylor, special examiner of the United States Circuit court for the district of Minnesota at United States commissioner's room, 314 Federal building, in the city of Milwaukee, and state of Wisconsin, at ten o'clock in the forenoon of the 16th day of May, 1905, then and there to be examined and to give evidence on the part of the petitioner in the above cause, and directing them, and each of them, to bring with them

and produce at the time and place aforesaid, the following papers and documents, to wit:

"All written contracts or agreements made and entered into between the first day of May, 1900, and the present time, by and between the above named defendant General Paper Company, and any and all publishers of newspapers in the following named cities for the furnishing by said General Paper Company of roll print or news print paper to said publishers:

Milwaukee, Wisconsin,
Oshkosh, Wisconsin,
St. Paul, Minnesota,
Minneapolis, Minnesota,
Duluth, Minnesota,
Des Moines, Iowa,
Dubuque, Iowa,
Sioux City, Iowa,
Omaha, Nebraska,
Kansas City, Missouri,
St. Louis, Missouri,
Chicago, Illinois,
New Orleans, Louisiana,
Denver, Colorado,
Salt Lake City, Utah." (pr. rec., 36, 37.)

Thereupon, on May 12, 1905, an *ex parte* order was entered directing subpoenas to issue as prayed in said petition.

Both of said petitions for *subpoenas duces tecum* were filed *ex parte* and no notice given to any one, and neither of them was supported by affidavits or other evidence (except affidavit shown on page 34), nor is either signed by the Attorney General.

The witnesses attended in obedience to these *subpoenas*, but refused to throw open to the inspection of counsel for the government the books, records and papers of the

General Paper Company, called for in the *subpoenas*, or to permit them to be given in evidence in the absence of a more specific showing that they contained evidence proper to be given and material to the issue.

Afterward, on June 1, 1905, the United States filed in said Circuit court for the Eastern District of Wisconsin a petition for an order requiring the witnesses Alexander, Whiting and Stuart to show cause why they should not answer the questions propounded to them and produce the books, records, papers, reports and contracts and comply with the requests referred to.

This petition, after reciting the issue in the cause, the appointment of the special examiner, the hearing before him on May 16, and the appearance at said hearing of Alexander, Whiting, Stuart and other witnesses, recites as follows:

"That the first witness called for examination by counsel for the petitioner was L. M. Alexander, secretary and treasurer of the defendant General Paper Company, president of the defendant The John Edwards Manufacturing Company, secretary and treasurer of the defendant The Nekoosa Paper Company, and secretary of the defendant Centralia Pulp and Water Power Company; that in the course of his examination by counsel for the petitioner the said Alexander did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Alexander being particularly set forth in the schedule of refusals on the part of said witness Alexander hereto attached, referred to and made a part hereof.

"That the second witness called for examination by counsel for the petitioner was George A. Whiting, first vice-president of the defendant General Paper Company, and president of defendant The

Wisconsin River Paper and Pulp Company; that in the course of his examination by counsel for the petitioner the said Whiting did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Whiting being particularly set forth in the schedule of refusals on the part of said witness Whiting hereto attached, referred to and made a part hereof.

"That the third witness called for examination by counsel for the petitioner was W. Z. Stuart, second vice-president of the defendant General Paper Company; that in the course of his examination by counsel for the petitioner the said Stuart did, contrary to law and to the practice of this court, refuse to answer certain questions put to him, and to comply with certain requests made upon him, such refusals on the part of said Stuart being particularly set forth in the schedule of refusals on the part of said witness W. Z. Stuart, hereto attached, referred to and made a part hereof.

"That all of the questions which the said witnesses L. M. Alexander, George A. Whiting and W. Z. Stuart have refused and do still refuse to answer are, as your petitioner verily believes, perfectly proper, competent and material to be answered, and all of the requests above referred to which the said witnesses Alexander, Whiting and Stuart have refused and do still refuse to comply with are, as your petitioner verily believes, perfectly proper to be complied with in order that all of the material facts relating to the charge set out in the bill of complaint or petition may fully appear and be laid before the court for the proper determination of said cause." (pr. rec. in 381, pp. 43, 44.)

This petition is sworn to by Frank B. Kellogg, one of the solicitors for the complainant.

Upon the filing of this petition an order was entered that the witnesses Alexander, Whiting and Stuart appear before the court on the sixth day of June to show cause why they should not answer the questions referred to, and comply with the requests mentioned in the petition, and produce for the purpose of their examination and inspection by counsel for the petitioner, and for the purpose of being offered in evidence, the books, records, papers, reports and contracts particularly referred to in the petition and schedule. (pr. rec., p. 54.)

To this petition answers were filed by the appellants Alexander, Whiting and Stuart, and also, by leave of court, an answer was filed by the General Paper Company. As these answers present practically the same defense, it will be sufficient to refer briefly to that of the appellant Alexander, which states that he is the secretary of the General Paper Company, and as such secretary, and not otherwise, is one of the custodians of the books, records, papers, reports and contracts mentioned in the order to show cause and in the petition and schedules attached thereto upon which such order was made, and that the same are the books, records, papers, reports and contracts of the General Paper Company, and not of this respondent, and are subject to the control of the General Paper Company, and not of this respondent; that he is also the president of the John Edwards Manufacturing Company, one of the defendants, and is the owner and holder of stock in said company of the par value of six thousand dollars (\$6,000); that he is also the secretary and treasurer of the Nekoosa Paper Company, another of said defendants, and the owner and holder of stock in said company at the par value of forty thousand dollars (\$40,000); that he is the secretary of the Cen-

tralia Pulp and Water Power Company, another of said defendants, and the owner and holder of stock of said company of the par value of twenty-five thousand dollars (\$25,000); that he is the owner and holder of stock in the General Paper Company of the par value of six thousand dollars (\$6,000); that said General Paper Company, John Edwards Manufacturing Company, Nekoosa Paper Company and Centralia Pulp and Water Power Company have objected and do object, and respondent has objected and does object, to the production of said books, records, papers, reports and contracts to be inspected by counsel for the complainant for the purpose of being offered in evidence; that said objections are based upon the following reasons:

First. The materiality of said books, records, papers, reports and contracts has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books, records, papers, reports and contracts contain matters of importance relating to the business of the General Paper Company and other defendants above named in no way bearing upon or touching the issues in this cause; that it would be highly injurious to the business interests of the General Paper Company and other defendants to make public said books, records, papers, reports and contracts, except on a proper showing that the same are material to establish some issue in this cause and that the same are not privileged for the protection of said defendant.

Second. That one of the purposes of the complainant in filing said suit and in making the requests in said suit is to compel the General Paper Company and other

defendants to furnish evidence tending to establish that the General Paper Company and other defendants have been guilty of violation of the Act of Congress of 1890, and to compel the production by the General Paper Company or other defendants, through their officers or otherwise, of said books, records, papers, reports and contracts for inspection and introduction as evidence would be contrary to the provisions of the fifth amendment to the Constitution of the United States.

Third. That the alleged acts of the General Paper Company and other defendants, which the complainant is endeavoring to establish, would, if committed by the General Paper Company, be violations of the laws of the state of Wisconsin and would subject the General Paper Company and other defendants above named to forfeiture of their charter and other penalties under said laws; and to compel it, through its officers or otherwise, to produce the books, records, papers, reports and contracts, would be to compel it to furnish evidence tending to establish that it has been guilty of such acts as would subject it to the forfeiture of its charter and other penalties that would be contrary to the provisions of the fourth and fifth amendments to the Constitution of the United States.

Fourth. That the purpose of the suit in the district of Minnesota, and the making of the request mentioned in the order to show cause, is to obtain a decree in enjoining the General Paper Company from carrying on its business for which it was incorporated, and to enjoin the General Paper Company from carrying out certain agreements and contracts existing between it and the other defendants on the ground that same were made in violation of the provisions of the act of Congress; that

said contracts and agreements are of great value to the General Paper Company and constitute practically its entire business, and are also of great value to the other defendants, and that to compel the production of said papers, books, records, reports and contracts for the purposes aforesaid would be contrary not only to the provisions of the fourth and fifth amendments to the Constitution, but also to the well established rule of the common law that no person will be compelled to discover any fact which may subject him to a forfeiture or penalty or anything in the nature of a forfeiture or penalty. (pr. rec. in 381, p. 85, *et seq.*)

The same reasons are then set forth respecting the answering of the questions which the witnesses here refused to answer.

The witness Whiting answered in substantially the same manner, alleging that he is first vice-president of the General Paper Company and the holder of thirty-five hundred dollars (\$3,500) par value of its stock, and as such vice-president, and not otherwise, was one of the custodians of the books, records, papers, reports and contracts mentioned in the order; that he is also the president of the Wisconsin River Paper and Pulp Company, one of the defendants, and the owner of its stock of the par value of over one hundred thousand dollars (\$100,000), and that the General Paper Company and the Wisconsin River Paper and Pulp Company objected and that he objected to the production of said books, records, papers, reports and contracts for inspection, giving substantially the same reasons as those given in the answer of Alexander why he should not be required to produce said papers and documents and required to answer said questions.

The witness Stuart answered that prior to July 1, 1905, he was the second vice-president of the General Paper Company, and as such second vice-president, and not otherwise, was one of the custodians of the books, records, papers, reports and contracts mentioned in the order; that the same are the papers or documents of the General Paper Company and not of the respondent, and that the General Paper Company objects to the production thereof, and said Stuart by his answer relies on the same ground of answer set up by Alexander.

The General Paper Company by permission of the court filed an answer setting up substantially the same reasons and defenses to the order to show cause.

The court ordered that the witnesses Alexander, Whiting and Stuart be directed to appear before the examiner and to answer each and every question put to them by counsel for the complainant, and to produce before the examiner at such time and place the books, records, papers, reports and contracts requiring of them respectively as more fully appears by said petition, for the purpose of examination for use in evidence by the complainant, and that the counsel should have the right at such time and place or any adjournment of any hearing before said examiner to inspect the books, records, papers, reports and contracts and introduce them or any of them in evidence of said cause.

From this order appeals were prayed by the witnesses Alexander, Whiting and Stuart and also by the General Paper Company, which appeals were allowed by the court and duly perfected.

(2)

In the second group is the appeal of Harmon and the General Paper Company (No. 385).

In this case, a plain summons was issued for Harmon and others without any order of court and without any *duces tecum* provision.

Harmon appeared before the examiner and refused to answer certain questions and to produce certain papers.

Thereupon, the United States filed a petition for the purpose of requiring Harmon to show cause why he should not answer said questions, produce said papers, orders and acceptances and comply with the request made of him.

This petition, after reciting the nature of the principal case, and the pleadings and issues therein, and the appointment of the special examiner, states that at a hearing on July 7, 1905, the witness Harmon refused to answer certain questions and to produce certain papers, orders and acceptances as more particularly set forth in a schedule attached to said petition; that said questions are, as the petitioner believes, proper, competent and material to be answered and the request to produce said papers, orders and acceptances is proper, competent and material to be complied with in order that the material facts relating to the charge set out in the bill of complaint may be fully laid before the court. (pr. rec. in 385, p. 3, *et seq.*)

Attached to this petition are copies of the bill and answers. (p. 9, *et seq.*)

Thereupon, an order was entered requiring the witness Harmon to show cause why he should not answer the questions and produce the books and papers referred to. (p. 28.)

By his answer, he stated that he was a director of the General Paper Company and from January 1, 1901, to June 5, 1905, was president and manager of the Grand

Rapids Pulp & Paper Company; that the papers, orders and acceptances referred to in said petition and order to show cause are not and were not in his custody or under his control and that he had not then and has not the power to produce said papers, orders and acceptances. The answer of the witness further stated that he was a stockholder in the Centralia Pulp & Water Power Company, holding stock of the par value of sixteen thousand dollars (\$16,000); that the defendants, the Grand Rapids Pulp & Paper Company, the General Paper Company and the Centralia Pulp and Water Power Company and the respondent, each and all, have objected and do object to the production of said papers, orders and acceptances; that said objections are based upon the following reasons:

First. That the materiality of said papers, orders and acceptances has not been established so as to authorize a court of equity to order their inspection, production or introduction as evidence and that the same are not material, relevant or competent in said cause; that he ought not to be required to disclose any portions of said papers, orders and acceptances except on proper showing that the same are material and are not privileged for the protection of the defendants.

Second. That one of the purposes of the suit and of the request to produce said papers is to establish, and to compel the General Paper Company, Grand Rapids Pulp & Paper Company and the Centralia Pulp & Water Power Co. and the respondent as a director, officer and stockholder of said companies to furnish evidence tending to establish, that said companies have been guilty of a violation of the Act of Congress of 1890; that to compel the production of said papers would be contrary to the

fifth amendment to the Constitution and also contrary to the provision of the fourth amendment to the Constitution.

Third. That the alleged acts of the General Paper Company, Grand Rapids Pulp & Paper Company and the Centralia Pulp & Water Power Company complained of by said complainant, would, if committed by them, be violations of the laws of the state of Wisconsin and would subject said corporations to forfeiture of their charters and other penalties under said laws; that to compel either of said corporations, through its officers or otherwise, to produce said papers, orders and acceptances for inspection and introduction as evidence in said cause, would be to compel it to furnish evidence tending to establish that it has been guilty of such acts and to subject it to forfeiture of its charter, contrary to the fourth and fifth amendments aforesaid.

Fourth. That in addition to the matters above set forth, the purpose of said suit is to enjoin the General Paper Company from operating under the agency contracts and agreements existing between the said General Paper Company and other defendants on the ground that said contracts and agreements were made in violation of the said Act of Congress; that said contracts and agreements are of great value to the General Paper Company and upon which rests practically its entire business; they are also of great value to the other defendants; and such injunction would result in great injury, damage and loss to said corporations, and that to compel the production of said papers as evidence for the purposes aforesaid would be contrary, not only to the provisions of the fourth and fifth amendments, but also to the well-established rule of the common law, as well as of equity juris-

prudence, that no person shall be compelled to discover any facts, either by producing documents or answering questions, which may subject him to prosecution for crime, or to a forfeiture or penalty, or anything in the nature of a forfeiture or penalty. (pr. rec. in 385, p. 28, *et seq.*)

By leave of court, the General Paper Company filed an answer to said rule to show cause, setting up substantially the same reasons and defenses as those contained in the answer of the witness Harmon. (p. 35, *et seq.*)

The court entered an order directing Harmon to appear before the special examiner and to answer the questions put to him and to produce before the examiner the papers, orders and acceptances requested of him by counsel for the complainant as more particularly shown in said petition, and schedule thereto attached, for the purpose of examination and use as evidence. (pp. 39-40.)

From this order, the court allowed a joint appeal by Harmon and the General Paper Company which was duly perfected. (p. 47.)

(3)

In the third group is contained the writs of error of Nelson, Bossard and McNair, being Nos. 490, 491 and 492.

In these cases, a petition for writs of *subpoena duces tecum* was filed in the Circuit court for the district of Minnesota. This petition, after describing the original proceeding and pleadings and issues therein and showing the appointment of the special examiner and that a hearing before said examiner had been set to be held at St. Paul, Minnesota, on July 24, 1905, states as follows:

"Fourth. Your petitioner further states that, in

order to fully determine the nature and effect of said combination and conspiracy, referred to in the petition, and satisfactorily and by competent and material evidence to establish the truth of the averments of said petition in that regard, it is proper, material and necessary to have summoned before the said special examiner at the hearing above mentioned the following witnesses, and to have produced in evidence and laid before the court for its inspection the various papers, books and documents hereinafter particularly mentioned in the possession and under the control of said witnesses respectively." (pr. rec. in 490, pp. 6-7.)

"Sixth. Your petitioner further states that the books, contracts and papers hereinafter particularly designated and referred to contain evidence material and necessary to be laid before the court in order to establish the allegations of the petition or bill of complaint herein; and your petitioner states, *on information and belief*, that the said books, contracts and papers will, among other things, establish the fact that the prices and amounts realized by the defendants other than the defendant General Paper Company, upon various grades and kinds of paper by them manufactured, and sold by and through the defendant General Paper Company, are and have been, by and through the medium of the said defendant General Paper Company and pursuant and in furtherance of the conspiracy and combination in restraint of trade and commerce alleged in said petition or bill of complaint, equalized among the defendants manufacturing said grades and kinds of paper, and that the profits arising from the sale of such paper, over and above a certain uniform and arbitrary price placed thereon, have been likewise pursuant to and furtherance of said combination and conspiracy, distributed and apportioned among the said defendants other than the defendant General Paper Company." (pr. rec. in 490, p. 7.)

The petition then prays for writs of *subpoena duces tecum* against Nelson, individually and as president of the Hennepin Paper Company; McNair, individually and as general manager of the Northwest Paper Company, and Bossard, individually and as treasurer of the Itasca Paper Company; and asks that they be required to produce certain books, papers and documents.

In each instance the books and papers required to be produced are described in substantially the same language and it will therefore be sufficient to set out one of such demands as follows:

"First. The account books, including the journals, ledgers and other books kept by or under the control of the defendant Hennepin Paper Company or the said B. F. Nelson, president of the said Hennepin Paper Company—

"(A) Showing the amount and kinds or grades of paper manufactured by the said defendant Hennepin Paper Company, and sold by or through the defendant General Paper Company as the exclusive sales agent of the said defendant Hennepin Paper Company, since the 5th day of July, 1900, and also showing where the said paper so manufactured and sold has been shipped, since the 5th day of July, 1900;

"(B) Showing the prices, amounts or credits received for such paper from the defendant General Paper Company, between the 5th day of July, 1900, and the present time, including entries showing the manner in which the prices and amounts received or realized by the said defendant Hennepin Paper Company, for any or all of its products so sold by or through the defendant General Paper Company have been equalized with the prices and amount received or realized by any or all of the other defendant companies of which the defendant General Paper

Company is and has been the exclusive sales agent, for any and all of their products or for similar products, between the 5th day of July, 1900, and the present time;

“(C) Showing the amounts and proportions of the earnings or profits of the defendant General Paper Company received by the defendant Hennepin Paper Company, from or through the defendant General Paper Company either directly or indirectly, either in the form of dividends or in the form of rebates, credits or otherwise, between the 5th day of July, 1900, and the present time.

“Second. All contracts, agreements, writings and account books, including journals, ledgers and other books, kept by or under the control of the defendant Hennepin Paper Company or the said B. F. Nelson, president of the said defendant Hennepin Paper Company, showing the agreement, arrangement or understanding under and pursuant to which, and the manner in which, the prices and amounts realized by the said defendant Hennepin Paper Company, upon the various kinds and grades of paper manufactured by it, and sold by or through the defendant General Paper Company, are and have been, since the 5th day of July, 1900, equalized, or the profits arising from the sale of such paper distributed or apportioned, as between the said defendant Hennepin Paper Company and other defendants manufacturing and selling through the defendant General Paper Company similar kinds or grades of paper, or among all of the defendants manufacturing similar kinds or grades of paper.” (pr. rec. in 490, pp. 8-9.)

There is an affidavit to this petition, made by Frank B. Kellogg, special assistant to attorney general, and it is as follows:

“That he has read the foregoing petition, knows the contents thereof, and that the statements therein

contained, *except as to matters therein stated on information and belief, are true.*" (p. 11.)

It will be noted that paragraph six, above quoted, states as a mere conclusion of fact that the books, contracts and papers referred to, contain evidence material and necessary to be laid before the court in order to establish the allegations of the petition or bill of complaint and that all that follows these words is stated upon information and belief and that there is nothing in the affidavit which shows that the affiant even *believes* to be true that part of the petition which is so stated upon information and belief.

Upon this application, an *ex parte* order was entered directing the subpoenas to issue. (p. 32.)

The witnesses Nelson, Bossard and McNair appeared before the examiner, but declined to answer certain questions and to produce the books, records and papers described in the *subpoena*, and thereupon the United States filed its petition for an order to show cause why they should not be required so to do.

This petition, after reciting the original case and the issues therein and the appointment of the special examiner and a hearing had before him on July 24, 1905, and the service of the several writs of *subpoena duces tecum*, states that said witnesses had refused to answer certain questions and to produce the books, records and papers mentioned and described in said subpoena, and prays that they be directed to appear before the court and show cause why they should not answer such questions and produce such books, records and papers. (pr. rec. in 490, p. 39, *et seq.*)

Thereupon an order to show cause was entered by the court requiring said parties to appear and show cause

why they should not make answers to said questions and comply with the request for the productions of the books, records and papers described in the writs of subpoena. (pp. 53-54.)

In answer to this rule to show cause, each of the witnesses set up substantially the same matters and defenses and as their answers are alike except as to the name of the companies with which they are connected and in which they are interested, the answer of one will be sufficient to refer to herein.

By the answer of Nelson, he shows that he is a director in, and president of, the Hennepin Paper Company and a stockholder therein to the amount of forty-nine thousand dollars (\$49,000) par value, and that the books and papers referred to in the order to show cause are the books and papers of the Hennepin Paper Company, and not of the respondent, and are subject to the control of the Hennepin Paper Company, and not of the respondent; that he is also a director of the General Paper Company and owner of stock therein of the par value of twenty-two hundred and fifty dollars (\$2,250); that the Hennepin Paper Company and the General Paper Company have objected and do object and that he, the respondent, has objected and does object to the production of said books and papers for the inspection by counsel for complainant and such objections are based upon the following reasons:

First. That the materiality of said books and papers in the cause has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence; that said books and papers contain matters of importance to the Henne-

pin Paper Company and the General Paper Company in no way bearing upon or touching the issues in this cause, which it would be highly injurious to the business interests of said companies to make public; that he ought not to be required to disclose any portions of said books and papers, except upon a proper showing that the same are material to the issues in said cause and are not privileged for the protection of the defendants above named.

Second. That one of the purposes of the complainant in instituting said cause and making the requests mentioned in said order to show cause is to establish and compel the Hennepin Paper Company and the General Paper Company and the respondent as director and officer of each thereof, to furnish the complainant with evidence tending to establish that said companies have been guilty of violations of the Act of Congress of 1890 and to subject said companies to penalties for such violations; and that to compel the production of the books and papers of said companies through their officers or otherwise, for inspection and introduction in evidence, would be contrary to the provisions of the fifth amendment to the Constitution and would also be contrary to the provisions of the fourth amendment to the Constitution.

Third. That the acts of the Hennepin Paper Company complained of in the original petition and which said complainant is endeavoring to establish, would, if committed by said Hennepin Paper Company, be violations of the laws of Minnesota and would subject said company to forfeiture of its charter and other penalties under said laws; that to compel said Hennepin Paper Company, through this respondent as one of its officers, or otherwise, to produce said books and papers for inspection and introduction in evidence, would be to compel it to furnish

evidence to establish that it had been guilty of such acts and subject it to a forfeiture of its charter and other penalties contrary to the provisions to the fourth and fifth amendments to the Constitution.

Fourth. In addition to the matters set forth, the purpose of the complainant in instituting said cause is to obtain a decree enjoining the said General Paper Company from carrying on the business for which it was incorporated and to enjoin the carrying out of certain contracts and agreements on the ground that said contracts and agreements are in violation of the provisions of the said Act of Congress; that said contracts and agreements are of great value, not only to the General Paper Company, whose entire business practically rests upon them, but of the Hennepin Paper Company and their annulment would result in great injury, damage and loss to said companies, and that to compel the production of said books and papers would be contrary not only to the provisions of the fourth and fifth amendments, but contrary to the well-established rule of common law, as well as of equity jurisprudence, that no person will be compelled to discover any fact, either by production of documents or answering questions which may subject him, either directly or eventually, to prosecution for a crime or to a forfeiture or penalty or anything in the nature of a forfeiture or penalty. (pr. rec. in 490, pp. 77, 78, 79.)

The same reasons are set up why the respondent should not be compelled to answer the interrogatories put to him.

The Hennepin Paper Company, Itasca Paper Company and the Northwest Paper Company also filed answers to said rule to show cause, all setting up substantially the same defenses and contentions.

The rule to show cause coming on to be heard, the court overruled contentions of plaintiffs in error and directed the witnesses to answer the questions and produce the books, records and documents referred to.

Thereupon the witnesses again appeared before the special examiner and refused to answer said questions and produce said documents.

Thereupon the United States filed its petition in said Circuit court, setting forth the various proceedings above mentioned and the refusal of the witnesses to obey the order to answer the questions and produce the books, records and documents referred to and an order was issued requiring the witnesses to show cause why they should not be punished for contempt of court.

Each of the witnesses answered the rule to show cause and in substantially the same manner; it will be necessary, therefore, only to quote one of the answers to show the purport thereof.

The witness Nelson answered that he is a director and president of Hennepin Paper Company, one of the defendants in the original cause, and is the owner and holder of stock in said Hennepin Paper Company of the par value of forty-nine thousand dollars (\$49,000) and that the books and papers referred to in said petition and in relation to which he is charged with contempt of court are the books and papers of the Hennepin Paper Company and not of the respondent and are subject to the control of the Hennepin Paper Company and not of the respondent.

That the respondent is also a director in the General Paper Company and a holder of stock therein to the amount of twenty-two hundred and fifty dollars (\$2,250).

That all the matters concerning which the questions

referred to in the petition were asked, and for refusing to answer which, the respondent is charged with contempt of court, came to the respondent's knowledge exclusively as president and director of the Hennepin Paper Company, or as a director of the General Paper Company, in the conduct of matters entrusted to him as such director or president, and which said companies, from the nature of the case, were compelled to entrust to him as such director or officer; that the Hennepin Paper Company and the General Paper Company have objected and do object and that the respondent has objected and does object to the production of said books and papers for inspection by counsel for said complainant for the purpose of being offered in evidence to said cause. And that said Hennepin Paper Company and General Paper Company have objected and do object, and the respondent has objected and does object, to said questions and to his being required to answer the same, for the reasons hereinafter set forth, and that upon advice of counsel respondent has refused to submit said books and papers or to answer said questions; said objections and refusals being based upon the following reasons:

First. That the materiality of said books and papers, and of the questions referred to, has not been established so as to authorize a court of equity to order their inspection, production and introduction in evidence and that the same are not material, relevant or competent evidence in said cause; that said books and papers contain, and said answers called for disclose, matters of importance to the business interests of said corporations in no way bearing upon the issues in this cause, and that he ought not to be required to disclose any portion of said books and papers, or to answer any of said questions, except on

a proper showing that the same are material to said cause to establish some issue therein and are not privileged for the protection of the defendants.

Second. That one of the purposes of the complainant in instituting said cause is to establish and compel said corporations and this respondent, as a director and officer thereof, to furnish said complainant evidence tending to establish that said corporations have been guilty of violations of the Act of Congress of 1890, and to subject said corporations to the penalties for such violations imposed by said act; and that to compel the production, through this respondent or otherwise, of the books and papers for inspection and introduction in evidence, or to compel said defendants, or either of them, through this respondent, to answer said questions would be contrary to the provisions of the fifth amendment to the Constitution, which provides that no person shall be compelled in any criminal case, to be a witness against himself; and also contrary to the provisions of the fourth amendment which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated.

Third. That the alleged acts of the Hennepin Paper Company complained of in the original petition would, if committed, involve violations of the laws of Minnesota and would subject said Hennepin Paper Company to forfeiture of its charter and to fines and other penalties under said laws; that to compel said company, through this respondent, to produce said books and papers, would be to compel it to furnish evidence which would subject it to a forfeiture of its charter and would be contrary to the provisions of the fourth and fifth amendments to the Constitution.

Fourth. That in addition to the matter above set forth, the purpose of the complainant in instituting said cause, and demanding said books and papers, and asking said questions, is to obtain a decree enjoining the said Hennepin Paper Company from operating under certain contracts and agreements existing between it and the General Paper Company, on the alleged ground that said contracts and agreements are in violation to the act of Congress; that said contracts and agreements are of great value to both companies and that their annulment would result in injury, damage and loss to both companies; and that to compel the answers to said questions and the production of said books and papers for inspection and introduction in evidence, would be contrary not only to the provisions of the fourth and fifth amendments to the Constitution, but also contrary to the well established rule of common law, as well as to equity jurisprudence, that no person will be compelled to discover any fact, either by producing documents or answering questions which might subject him to prosecution for a crime, or to a penalty or a forfeiture or anything in the nature of a penalty or forfeiture.

Further answering, the respondent alleges that he ought not to be required to answer said questions or produce said books and papers for the following reasons:

First. The purpose thereof is to establish and compel the respondent to furnish evidence tending to establish that he has been guilty of certain violations of the act of Congress and subject him to a penalty for such violations, and that to compel him to answer such questions and produce, for the purpose of being offered in evidence, such books and papers, would be contrary to the provisions of the fourth and fifth amendments to the Constitution.

Second. That the alleged acts of said corporations complained of in the original petition would, if committed by the defendant companies, involve violations of the laws of Minnesota, by respondent and would subject him to fine and imprisonment, and other penalties under said laws; and that to compel him to answer said questions would be to compel him to furnish evidence tending to establish that he has been guilty of the violations of the laws of Minnesota and subject him to fine and imprisonment and other penalties, contrary to said amendments of the Constitution.

Third. That one of the purposes of the complainant in instituting said suit and seeking to secure said evidence is to establish and compel the respondent to furnish evidence tending to establish that which would result in subjecting him to loss or detriment in the nature of a penalty or forfeiture, in that the Hennepin Paper Company, of which he is a stockholder, would be subjected, under the laws of Minnesota, to fines and penalties, including the forfeiture of its charter, resulting in the virtual forfeiture of the stock of the respondent in said defendant company, and in the loss and forfeiture of his interest in the General Paper Company.

And further answering, the respondent says that he is advised and believes and so charges and avers that the order of this court entered on October 7th, 1905, requiring him to testify as set forth in said petition and to produce the books and papers therein described, is void for want of power and jurisdiction in said court to enter the same. (pr. rec., p. 62.)

The petition to show cause why the witnesses should not be punished for contempt was heard upon petition and answers thereto, filed by said witnesses, and upon

various evidences embodied in a bill of exceptions including the proceedings under the original petition, and thereupon the court overruled the objections and answers of the witnesses and ordered that they be severally adjudged guilty of contempt in having wilfully disobeyed the order of the court entered on the seventh day of October, 1905; and adjudged that they, and each of them, be severally assessed and fined in the sum of one hundred dollars (\$100) for said disobedience to said order, said fines to be paid to the clerk of this court for the use of the United States as a punishment for such contempt. (pr. rec., 74-75.)

And it was further ordered and adjudged that in addition to said fines, said witnesses, and each of them, be imprisoned in the county jail of Ramsey County, Minnesota, each until his said fine is paid and until he shall fully comply with the order entered on the seventh day of October, 1905.

Each of the witnesses sued out a writ of error and assigned errors upon the record, and, in each instance, the court entered an order making the writ of error a *supersedeas*.

It appears, therefore, from the record, that these cases come here in two forms.

1. The Wisconsin cases upon appeals duly prayed and allowed from an order requiring the witnesses to testify and produce books, records and papers.

2. The Minnesota cases by writs of error from an order adjudging the witnesses guilty of contempt of court for refusing to obey the order of court and punishing them by the imposition of a fine.

In the case of witness Harmon, in addition to all other questions, it appears that he never was served with a

subpoena requiring him to produce the books, papers and documents in question, but was simply asked to produce them whilst being examined as a witness brought to the stand upon a common or ordinary *subpoena*.

In each and every case, the witness denies under oath, his possession and control of the books and papers, and it is not shown in any or either case that it is within the power of the witness to comply with the order to produce such books and papers.

POINTS.

(1)

By the fourth amendment to the Constitution of the United States it is provided:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated."

By the fifth amendment it is provided as follows:

"No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law."

The first question that naturally arises is whether corporations are within the protection of these amendments, and, if so, the next question is whether the proceedings in this case are consistent with the privileges conferred by the amendments.

It has been held by this court that the protection of the fourteenth amendment extends over corporations. The language of that amendment is:

"Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In the case of the *Pembina Mining Company v. Pennsylvania*, 125 U. S., 181, the court says:

"The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to pre-

vent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation. *Under the designation of person there is no doubt that a private corporation is included.* Such corporations are merely associations of individuals united for a special purpose and permitted to do business under a particular name, and have a succession of members without dissolution." (pp. 188-9.)

In *Home Insurance Co. v. New York*, 134 U. S., 594, the court says:

"It is conceded that corporations are persons within the meaning of this (fourteenth) amendment."

In the case of the *Gulf, Colorado and Santa Fe R'y v. Ellis*, 165 U. S., 150, the court says:

"It is well settled that corporations are persons within the provision of the fourteenth amendment of the Constitution of the United States. (Citing cases.) The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can in respect to the individuals who are the equitable owners of the property belonging to such corporations."

We submit that if corporations are within the protection of the fourteenth amendment, there is no reason why they should not also be within the protection of the fourth and fifth amendments.

(2)

Are the proceedings in this case violative of the provisions of the fourth amendment to the effect that the people shall be secure in their persons, houses, papers and effects against unreasonable searches and seizures?

That improperly forcing of a person to produce his books and papers in court is a seizure of such books and papers, seems to be settled by the case of *Boyd v. United States*, 116 U. S., 616.

In that case this court said:

"Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible or compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the fourth and fifth amendments run almost into each other."

In this case the government seeks to search for and seize the papers of the corporations interested in the litigation by compelling the officers of these corporations in violation of their duties as officers, and in defiance of the commands of their principals, to remove from their place of deposit and bring into court the private papers, records, books and effects of the corporations.

That this is a seizure there can be no doubt; the only question is, is it an unreasonable seizure?

The power of *courts of law* to require a litigant to produce his books and papers to be used against him in trials at law is derived from Sec. 724 of the Revised Statutes, and is as follows:

"In the trial of actions at law the courts of the United States may on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery."

In commenting upon this statute this court in *Boyd v. United States*, stated:

"The restriction of this proceeding to 'cases and under circumstances where they (the parties) might be compelled to produce the same (books or writings) by the ordinary rules of proceeding in chancery,' shows the wisdom of the congress of 1789. The court of chancery had for generations been weighing and balancing the rules to be observed in granting discovery on bills filed for that purpose, in the endeavor to fix upon such as would best secure the ends of justice. To go beyond the point to which that court had gone may well have been thought hazardous. Now it is elementary knowledge, that one cardinal rule of the court of chancery is never to decree a discovery which might tend to convict the party of a crime, or to *forfeit his property*. And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to *forfeit his property*, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power but it cannot abide the pure atmosphere of political liberty and personal freedom." (pp. 631 and 632.)

The power of the court of chancery to compel the production of books, papers, records, etc., is regulated by the common law pertaining to bills of discovery, and is unquestionably subject to the following rules and limitations:

1. There can be no compulsory discovery of the books and papers of another unless there is first a preliminary showing that they contain matters material and relevant to the issue.

2. There can be no enforced discovery if the effect may be to subject the party who is called upon to produce the books and papers to a penalty of forfeiture, or anything in the nature of a penalty or forfeiture.

In this case there was no proof that any of the books and papers called for would furnish competent and relevant evidence in the case.

In the first group of cases, the allegation under which the *subpoenas duces tecum* were obtained was as we have seen that to fully determine the nature and effect of the alleged combination and conspiracy and to establish the truth of the averments of the petition, it was proper, material and necessary to have summoned before the special examiner certain named witnesses and have produced in evidence and laid before the court for inspection, the papers, books and documents thereafter particularly mentioned.

This allegation was a mere conclusion of the pleader, and is not even supported by proper affidavit.

In the same case, in the second petition for a *subpoena*, the allegation was that the General Paper Company had entered into certain contracts with newspapers for the purchase of news print, and that said contracts were competent and material evidence.

This statement is also a mere conclusion, and is not supported by any proof.

In the *Harmon* case, no application was made to the court for *subpoena duces tecum*, and the witness was simply asked while on the witness-stand, and without any previous showing, to produce certain books and papers.

In the third group of cases, Nelson and others, the application for the writ alleged that the books, contracts and papers, thereafter particularly designated and re-

ferred to, contained evidence material and necessary to be laid before the court in order to establish the allegation of the petition.

It is further stated upon "information and belief" that said books, papers and contracts will, among other things, establish the fact that the prices and amounts realized by the defendants have been equalized among the defendants, and that the profits arising from the sale of paper, over and above a certain uniform and arbitrary price, have been distributed and apportioned among the defendants.

This petition is sworn to, but the affiant, in so doing, expressly excepts matters stated upon "information and belief" and does not even declare a belief in such statements.

There is not a single allegation, nor is there any proof as to the contents of the books and papers called for. It is manifest that the entire object and purpose of compelling their production is to enable counsel for the government to inspect and read them for the purpose of ascertaining whether or not there is anything in their contents which would help his case. In other words the government asks that it be given a free license to learn the contents of every book, paper and document in the possession of the corporations, to inspect all of their business transactions, to scrutinize every dealing which they have ever had with any of their customers, to enter into their innermost business affairs, and all for the purpose of ascertaining whether or not it can thereby discover something which it may regard as of sufficient importance to offer in evidence.

The general statements in the petitions, such as that in order to fully determine the nature and effect of the

alleged combination and conspiracy and establish the truth of the averments of the petitions, it is proper to have produced in evidence and laid before the court for inspection, various books, papers and documents, amount to nothing. This is not an allegation that any evidence which would tend to support the allegation to the bill, are contained in the books.

The allegation in the Minnesota case that the books, contracts and papers designated contain evidence material and necessary to be laid before the court in order to establish the allegation of the petitions, is no better.

There should be a showing that the books and papers contain some specific and detailed facts from which the court can see that they would be material; the allegation of the pleader that they contain evidence material and necessary does not enable the court to determine whether it is proper to direct the writ to issue.

In these cases there was no showing either in the petitions upon which the writs were issued, or otherwise, that the contents of the books and papers were such as to entitle the petitioner to read them in evidence.

It must be remembered that this is an action in which the final judgment of the court is invoked, and in which a final decree may be entered and not a mere inquiry or investigation, as was the case in *Interstate Commerce Commission v. Baird*, 194 U. S., 25, and in *Brown v. Walker*, 161 U. S., 591.

In the *Baird* case (p. 43), the court calls attention to this distinction.

A merely inquisitorial body is not governed by the same rules of evidence as those which pertain in trials between litigants in courts of law and equity.

In the second place, the only object and purpose in ex-

torting the testimony sought to be obtained is to lay the foundation for a decree which in itself necessarily works a forfeiture and imposes a penalty, or something in the nature of a forfeiture or penalty.

There can be no object in obtaining the testimony, except for the purpose of getting a decree as prayed by the bill which would include the forfeiture of valuable contract rights.

It is no answer to this to say that if the contracts attacked by the bill are unlawful it imposes no penalty or forfeiture to enjoin their performance; it might equally well be said that if a burglar is guilty it is no hardship upon him to make him prove his own guilt. The test is not whether the party is guilty or not, but whether the tendency of the evidence would be to show guilt and thereby subject him to a penalty or forfeiture.

The very purpose and object of the suit and of the testimony sought to be elicited in support thereof being to impose a penalty and enforce a forfeiture, immunity is impossible, unless it be said that the effect of giving the testimony would be to defeat the suit, and if that were so, no court would go through the absurd performance of compelling the production of testimony which would have such effect.

In addition to the penalty and forfeiture which would necessarily result from a decree, the corporations under the Sherman Act would become subject to other heavy pains and penalties. They would be subject to heavy fines, and under the sixth section any of their property, whilst in course of transportation from one state to another, might be seized and condemned and forfeited to the United States. They would also be subject to civil actions at the suit of persons with whom they had

dealt, and in such actions triple damages might be recovered as provided by section seven.

Claims under section seven, if any have accrued, belong to third persons who have a vested right therein which Congress is powerless to divest.

Moreover under the statutes of both Wisconsin and Minnesota the corporations interested in these appeals and writs of error, if found guilty of matters charged in bill of complaint, are liable not only to large penalties by way of fines and forfeitures, but are also liable to be deprived of their charters and franchises.

We submit, therefore, and under the well established rules of the common law, it would be an unreasonable search and seizure of the books and papers of these corporations to compel their production in evidence, for the reason that they are not shown to contain matters relative to the issues in the case, and for the additional reason that if relevant and competent, their production might result in the infliction of heavy pains and penalties.

It is therefore submitted that what is sought to be accomplished in this case is of itself an unreasonable search and seizure within the inhibition of the fourth amendment.

(3)

It would seem to be equally clear that the effect of the judgment below, if sustained by this court, is to compel the corporation to be a witness against itself in a proceeding which is of a criminal nature and thereby to deprive it of its property without due process of law.

It will be argued on behalf of the government that the witness is protected by the immunity statute of 1903, and that the witness cannot set up the privilege of the corporation.

Assuming for the moment that the witness is sufficiently protected by the immunity act, let us look at the other question:

Ordinarily it is, of course, true that the witness cannot set up as a reason for refusing to testify that thereby the privilege of another will be violated.

In these cases, however, the witnesses are required to testify in relation to matters of which they have no knowledge, except as officers and confidential representatives of the companies which they represent, and they are further called upon to produce books and papers belonging not to themselves but to corporations, and over which they have no personal control, and against the will of the corporations to remove such books and records from its custody and place them in the possession of the examiner and counsel for the government.

Unless, in cases of this character, the witnesses can refuse to produce the books of the corporation, then it is manifest that the corporation cannot under any circumstance have protection against the invasion of its records, because in any case any litigant can compel an officer of the corporation to bring its books into court without regard to the results which may ensue.

A witness who is an officer of a corporation and who is called upon to testify merely by reason of the fact that he is such officer and is called upon to produce books and papers which belong to the corporation and over which he has physical control (if at all) purely and simply by virtue of his office, is differently situated from the ordinary witness; he and his corporation are one; he is not only a part of the corporation, but for many purposes he is the corporation itself. It should not only be his right, but his duty to interpose the objection, to assert the privilege

of the corporation and to protect its papers and records against improper inspection.

If the officer of the corporation can be compelled to produce the books, records and papers of the corporation in a proceeding against it which is of a criminal nature, then, in effect, the corporation can be compelled to be a witness against itself.

(4)

The so-called Immunity Act of 1903, is in the form of a proviso engrafted upon an appropriation for the purpose of employing special counsel to conduct proceedings under the Inter-State Commerce and Anti-Trust Acts, and is as follows:

"Provided that no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which he may testify or produce evidence in any proceeding, suit or prosecution under said acts."

A somewhat similar provision contained in the Act of 1893, but relating to proceedings before the Inter-State Commerce Commission, was considered by this court in

Brown v. Walker, 161 U. S., 591.

In that case the court held that the act granted an immunity as broad as the constitutional privilege, and, therefore, deprived the witness of the right to refuse to testify.

That was a case in which the witness had been adjudged in contempt for refusing to testify before a grand jury to transactions which tended to show that he had been guilty of infractions of the Inter-State Commerce Act.

No question was raised in the case of *Brozen v. Walker* as to the effect of the testimony on any corporation of which the witness was an officer or agent.

The question presented in that case was simply whether the witness might subject *himself* to a criminal prosecution by producing the papers demanded of him.

The act does not purport to give immunity to the corporation of which the witness is an officer and which he represents; it offers immunity to no one except the witness himself.

The corporations in question, as we have already shown, might by the testimony of the witnesses be incriminated and subjected to severe fines and penalties under the Sherman Act. They might become liable for heavy fines, and their property in process of transportation become subject to seizure and forfeiture. Against this the Act of 1903 does not attempt or profess to indemnify corporations.

Assuming that it does grant immunity to the individual witness for any personal acts which he may have done in violation of the law, still in cases like the present, the rights and interests of the corporations are so bound up in those of the witnesses that there can be no complete immunity as long as the corporations are left subject to prosecution.

Under the laws of both Wisconsin and Minnesota the witnesses are liable, if guilty of the acts complained, to fines and imprisonment. In addition to this under the laws of both states, the corporations, if guilty of the acts complained of, are subject not only to fines and penalties, but as well may be deprived of their charters and franchises.

There is no attempt on the part of congress to grant to

the corporations immunity from, or protect them against such a result, but even if there were, unquestionably congress has no power to prevent a state from revoking or annulling, for misuser, a charter or franchise granted by such state to the corporation.

We are not unmindful of what this court has said in the case of *Brown v. Walker*, as to the effect upon state prosecutions, but we submit that the court did not intend to be understood as saying that if the testimony, in addition to its effect upon the pending suit, necessarily showed a violation of a separate and independent state statute, the state would become powerless to enforce such statute.

Conceding that the immunity goes to the extent that the state cannot punish for the same offense, still the violation of the state statute is a separate and independent offense.

It is well settled that the same act may constitute an offense against two different sovereignties. The acts complained of might be in violation of the act of congress, and also of the statutes of the state in which the act was committed.

We do not apprehend that this court intended, in *Brown v. Walker*, to hold that the giving of testimony in the United States court gave immunity from punishment for the violation of a state statute creating a separate and distinct criminal offense.

If by the same act the National Laws regarding Inter-State Commerce were violated and the State Laws regulating Intra-State Commerce were violated, the guilty party could be reached and punished by both sovereigns, although the violation of both laws consisted of the same act or series of acts.

Congress has no power over Intra-State Commerce; no power to prescribe regulations regarding same; no power to punish the violation of state regulations regarding same, and it would seem, as a necessary consequence, no power to pardon violations of state regulations thereof.

It would seem at any rate that beyond any question that the state can decree, as one of the punishments to be inflicted for violation of its laws, that the charter of the offending corporation shall be vacated and the corporation dissolved. Congress has no power to stay any such proceeding.

This court will be respectfully asked to review, and at least narrow and limit, what was said in *Broken v. Walker* regarding the effect of the immunity act upon state prosecutions.

The appellants and plaintiffs in error ask that the order of the Circuit Court in the Eastern District of Wisconsin and the judgments of the Circuit Court for the District of Minnesota be each and all reversed.

Respectfully submitted.

WILLIAM BRACE,
Of Counsel for Appellants.



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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1908.

No. 381.

LEWIS M. ALEXANDER, APPELLANT,
vs.
THE UNITED STATES.

No. 382.

GEORGE A. WHITING, APPELLANT,
vs.
THE UNITED STATES.

No. 383.

WILLIAM Z. STUART, APPELLANT,
vs.
THE UNITED STATES.

No. 384.

GENERAL PAPER COMPANY, APPELLANT,
vs.
THE UNITED STATES.

No. 385.

E. T. HARMON AND GENERAL PAPER
COMPANY, APPELLANTS,
vs.
THE UNITED STATES.

No. 490.

BENJAMIN F. NELSON, PLAINTIFF IN ERROR,
vs.
 THE UNITED STATES.

No. 491.

ANSELM C. BOSSARD, PLAINTIFF IN ERROR,
vs.
 THE UNITED STATES.

No. 492.

CLARENCE I. McNAIR, PLAINTIFF, IN ERROR,
vs.
 THE UNITED STATES.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

Of the above-entitled causes, those numbered 381, 382, 383, 384 and 385 come to this court by appeals from orders of the United States Circuit Court for the Eastern District of Wisconsin, directing the witnesses involved to answer certain ques-

tions before the examiner; and numbers 490, 491 and 492 come here by writs of error from a judgment of the United States Circuit Court for the District of Minnesota, adjudging the plaintiffs in error, Nelson, Bossard and McNair to be severally in contempt of the said court, for refusing to comply with an order of the court directing them to answer certain questions before the examiner.

The cause in which the examinations, both in the Wisconsin and in the Minnesota Circuit, was being held is a proceeding by way of petition brought in the United States Circuit Court for the District of Minnesota, by the United States of America, against the General Paper Company and twenty-three other corporations defendant, under and pursuant to the provisions of the act of Congress of July 2, 1890, entitled "An act to Protect Trade and Commerce against unlawful Restraints and Monopolies." The defendants other than the General Paper Company are as follows:

Atlas Paper Company, Appleton, Wisconsin.

Kimberly and Clark Company, Neenah, Wisconsin;

Riverside Fibre and Paper Company, Appleton, Wisconsin;

- Wausau Paper Mills Company, Brokaw, Wisconsin;
- Centralia Pulp and Water-Power Company,
Centralia, Wisconsin;
- Combined Locks Paper Company, Combined
Locks, Wisconsin;
- Dells Paper and Pulp Company, Eau Claire,
Wisconsin;
- Grand Rapids Pulp and Paper Company,
Grand Rapids, Wisconsin;
- Menasha Paper Company, Menasha, Wisconsin;
- The Nekoosa Paper Company, Nekoosa, Wisconsin;
- The Falls Manufacturing Company, Oconto
Falls, Wisconsin;
- Flambeau Paper Company, Park Falls, Wisconsin;
- The John Edwards Manufacturing Company,
Port Edwards, Wisconsin;
- The C. W. Howard Company, Menasha, Wisconsin;
- Wolf River Paper and Fiber Company,
Richmond, Wisconsin;
- The Wisconsin River Paper and Pulp Company,
Plover, Wisconsin;

Tomahawk Pulp and Paper Company, Park Falls, Wisconsin;

Consolidated Water Power and Paper Company, Grand Rapids, Wisconsin;

Rhineland Paper Company, Rhineland, Wisconsin;

The Itasca Paper Company, Grand Rapids, Minnesota;

Hennepin Paper Company, Little Falls, Minnesota;

Northwest Paper Company, Cloquet, Minnesota.

The Petoskey Fibre Paper Company, Petoskey, Michigan.

It is charged that these defendants, all of which are engaged in the manufacture of news-print, manila and fiber papers, have entered into a combination and conspiracy to restrain and eliminate competition among themselves, by and through the organization of a common selling agent, namely, the General Paper Company, the remaining party defendant.

The manufacturing corporations were, it is averred, prior to the year 1900, in active competition with one another, not only in the manufacture, but in the sale, of their respective products throughout

the middle, southern and western states. The gist of the Government's petition is that such competition was deliberately and effectually eliminated and suppressed by the organization, in the spring of the year 1900, of the General Paper Company. The language of the petition is that these defendants

“in violation of the provision of sections one and two, respectively, of an Act of Congress, approved July 2, 1890, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies’ (26 Stat. 209), entered into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several states, and to control, regulate and monopolize said trade and commerce, and thereby, in conjunction and alliance with defendants who subsequently joined in the aforesaid agreement, combination and conspiracy, as set forth in paragraph next succeeding, do now control, regulate and monopolize and restrain the trade and commerce, not only in the manufacture of news print, manila, fibre and other papers, but also the distribution, sale and shipment thereof among and throughout the states of the Union aforesaid and all states west of the

Mississippi river, by means and in the manner following, to-wit: on or about the 26th day of May, 1900, the defendants last above named caused to be organized, under the laws of the State of Wisconsin, a corporation styled the General Paper Company, with a capital stock of one hundred thousand dollars, divided into one thousand shares, which were distributed among and are now owned and held by the said last named defendants and the defendants that subsequently joined in the aforesaid combination and conspiracy, as hereinafter set forth, in proportions based, as your petitioner is informed, upon the average daily output of the mills of each defendant, which corporation, by its articles of incorporation, is authorized to become, as its principal business, the sales agent for any and all kinds of paper and paper products and any and all merchandise manufactured from paper or paper products by mills in the State of Wisconsin or elsewhere; and thereupon, in pursuance of a common plan and understanding, each and all of the aforesaid defendants entered into a contract and agreement with the said General Paper Company, making it the exclusive sell-

ing agent for their papers and paper products and conferring upon it absolute power to control and restrict the output of their mills, fix the price of all papers sold throughout the states aforesaid, and determine to whom and the terms and conditions upon which paper shall be sold, and into what states and places it shall be shipped, and what publishers and other customers each mill shall supply."

The answers filed by the defendants may be briefly summarized as follows: First, they admit the incorporation and location of the various companies as averred in the petition. Second, they admit that the manufacturing corporations defendant are and have been engaged in selling and shipping their product throughout the states and territories mentioned in the petition. Third, they admit that prior to the organization of the General Paper Company these defendants were engaged in active competition with one another in the sale and shipment of their product, and allege that they have ever since continued so to compete. Fourth, it is admitted that the defendant General Paper Company was organized at the time given in the petition, with a capital stock of one hundred thousand dollars, and with authority to become, as its principal business, the sales agent

for any and all kinds of paper and paper products, and any and all merchandise manufactured from paper and paper products, by mills of the State of Wisconsin or elsewhere. It is further admitted that thereafter each of the manufacturing corporations defendant separately entered into a contract with the General Paper Company, making that company its exclusive selling agent to handle certain specified grades of paper. The answers deny, however, that the contracts between the General Paper Company and the manufacturing corporations ever conferred upon the former the power to control or restrict the output, or to fix the prices, conditions of sale or other manner of disposition of the paper sold under such contracts. On the contrary, it is answered that the General Paper Company is and has been under the duty merely of keeping the manufacturing defendants supplied with orders, at the best prices reasonably obtainable, and to submit all orders so obtained for the approval or rejection of the mill by which they were to be filled; and it is specifically denied that the defendants have ever entered into any agreement, combination or conspiracy to restrain trade and commerce, as charged in the petition. Fifth, it is admitted that the General Paper Company receives a fixed percentage upon all sales of paper, for

its services, and that the profits of the business of the General Paper Company, after paying expenses, are divided among the stockholders in proportion to their holdings.

As soon as the cause was at issue, a special examiner was appointed by the United States Circuit Court for the District of Minnesota, with authority to take testimony both within and without the District.

Hearings before the examiner were duly begun at Milwaukee, Wisconsin, on May 16th, 1905. The first witnesses called for examination by the Government were Lewis M. Alexander, secretary and treasurer of the General Paper Company, president of the John Edwards Manufacturing Company, secretary and treasurer of the defendant The Nekoosa Paper Company, and secretary of the Centralia Pulp and Water-Power Company; George A. Whiting, first vice-president of the General Paper Company, and president of the defendant The Wisconsin River Paper and Pulp Company; and William Z. Stuart, second vice-president and general sales manager of the General Paper Company. These witnesses appeared before the examiner in obedience to *subpoenas duces tecum* issued by order of the United States Circuit Court for the Eastern District of Wisconsin

(Trans. of Record, pages 1 to 35, 468. A second subpoena was served upon the witness Alexander, pursuant to the further order of the Circuit Court for the Eastern District of Wisconsin (Trans. of Record, pages 35 to 40, 500). These subpoenas directed the witnesses to produce before the examiner the books and papers hereinafter more particularly referred to.

On the examination of the witnesses up to the time of the application to the court, and chiefly upon the examination of the witness Alexander, the following among other facts were established.

First, the General Paper Company was organized at a meeting held in Milwaukee, Wisconsin, on May 26, 1900, at which persons representing the manufacturing corporations which originally went into the General Paper Company were present and subscribed for stock (Trans. of Record, pages 140 to 144; Petitioner's Exhibit 29, Transcript of Record pages 484 to 496).

Second, immediately after the organization of the General Paper Company and upon the date when that company opened its offices in Chicago for the transaction of business, that is to say, July 5, 1900, the corporations first represented in the General Paper Company, numbering fourteen in all, entered

into contracts with that company which are identical in form. Each contract was dated July 5, 1900, ran for the period of five years, and contained the following clause:

"Said further covenants and agrees to and with the General Paper Company that for the period of five years from the date of this contract, said General Paper Company is constituted and shall be the sole sales agent of said Company, for the sale of any and all box lining, hanging, novel, print, fiber and manila paper manufactured by Company at said mills, and that during said period of five years from the date of this contract, any and all paper of the grades and classes hereinbefore described manufactured by said mills of Company shall be sold only through and by said General Paper Company, and that said Company will not sell or cause to be sold any of the grades or classes of paper hereinbefore described manufactured by it, by or through any other agent or agency, person or corporation whatsoever other than said General Paper Company, and that it will not during said period

of five years from the date of this contract itself sell or cause to be sold any paper manufactured by it in the aforesaid mills, of the classes or grades hereinbefore described, in any manner whatever except by and through said General Paper Company." (Trans. of Record, pages 497, 498.)

Third, from the organization of the General Paper Company, each constituent manufacturing corporation has been represented by one of its principal officers upon the board of directors of the General Paper Company, and the number of directors has, for this purpose, been from time to time increased as new manufacturing corporations have entered into contracts making the General Paper Company their exclusive selling agent. (Trans. of Record, pages 272, 273.) There was an entire rearrangement and redistribution of the stock of the General Paper Company in December, 1902, at which time several new companies became members of the General Paper Company. The following table, compiled from the evidence, shows the time when each corporation joined the General Paper Company, the membership of the board of directors of that company, and the distribution of stock:

Fourth, the General Paper Company has an executive committee, comprised of substantially the same persons that constitute the board of directors.

Fifth, the General Paper Company has books and records containing the minutes of the meetings of the stockholders, directors and the executive committee.

Sixth, the treasurer and sales agent have, from time to time since the organization of the General Paper Company, presented reports to the stockholders, directors and to the executive committee.

Seventh, there were various preliminary meetings held during the fall of 1899 and the spring of 1900, by the parties who ultimately organized the General Paper Company, at which meetings the organization of such company was discussed. (See particularly testimony of witness Whiting.) As expressed by the first vice-president of the General Paper Company, that company was organized "through a necessity to head off the abuses of the trade." Among these abuses the witness named the low price of paper, cash discounts, the insistence of publishers upon allowances for waste paper which had to be returned to the mill, and the demand of the consumer for the right to purchase on a production basis, that is, to have the weight of paper regulated so that it

CONSTITUENT COMPANIES	Date of contract with Gen. Paper Co.	SUBSCRIPTIONS MAY 26, 1906
Kimberly & Clark Co.....	July 5, 1900.....	{ J. A. Kimberly..... J. C. Kimberly.....
Atlas Paper Co.....	July 5, 1900.....	{ W. Z. Stuart..... F. C. Shattuck.....
Combined Locks P. Co.....	July 5, 1900.....	{ J. S. Van Nortwick... D. E. Reese.....
The C. W. Howard Co.....	July 5, 1900.....	C. W. Howard.....
John Edwards Mfg. Co.....	July 5, 1900.....	L. M. Alexander.....
Nekoosa Paper Co.....	July 5, 1900.....	T. E. Nash.....
Centralia P. & W.-P. Co.....	July 5, 1900.....	F. Garrison.....
Grand Rapids P. & P. Co.....	July 5, 1900.....	{ E. T. Harmon..... John Daly.....
Wis. River P. & P. Co.....	July 5, 1900.....	{ Geo. A. Whiting..... C. A. Babcock.....
Tomahawk P. & P. Co.....	July 5, 1900.....	A. M. Pride.....
Dells Paper & Pulp Co.....	July 5, 1900.....	D. R. Davis.....
Hennepin Paper Co.....	July 5, 1900.....	B. F. Nelson.....
Wausau Paper Mills Co....	July 5, 1900.....	W. L. Edmonds.....
Falls Mfg. Co.....	July 5, 1900.....	{ E. A. Edmonds..... N. H. Brokaw.....
Itasca Paper Co.....	February 5, 1902..	
Northwest Paper Co.....	April 8, 1902.....	
Petoskey F. P. Co.....	July 14, 1902.....	
Riverside P. & P. Co.....	December 1, 1902..	
Wolf River P. & F. Co.....	December 1, 1902..	
Menasha Paper Co.....	December 1, 1902..	
Flambeau Paper Co.....	December 1, 1902..	
Rhineland Paper Co.....	August 31, 1904...	
Consolidated W.-P. & P. Co.....	July 31, 1904.....	
Treasury Stock.....		
Sales Mgr. and Vice Pres.....		
TOTAL.....		

SUBSCRIPTIONS JUNE 18, 1900 (*)					STOCKHOLDERS DECEMBER 11, 1900					STOCKHOLDERS DECEMBER 10, 1901					STOCKHOLDERS DECEMBER 9, 1902				
Shares			Direct- ors		Shares		Direct- ors			Shares		Direct- ors			Shares		Direct- ors		
125	J. A. Kimberly	300	D	J. A. Kimberly	200	D	J. A. Kimberly	200	D	J. A. Kimberly	200	D	J. A. Kimberly	125	D				
5	J. C. Kimberly		D	J. C. Kimberly		D	J. C. Kimberly		D	J. C. Kimberly		D	J. C. Kimberly	8 1/4	D				
50	W. Z. Stuart		D	W. Z. Stuart		D	W. Z. Stuart		D	W. Z. Stuart		D	H. Babcock	5					
5	F. C. Shattuck		D	F. C. Shattuck		D	F. C. Shattuck		D	F. C. Shattuck		D							
65	J. S. Van Nortwick	90	D	J. S. VanNortwick	90	D	J. S. VanNortwick	90	D	J. S. VanNortwick	90	D	J. S. VanNortwick	86 1/4	D				
50	C. W. Howard	34	D	C. W. Howard	34	D	C. W. Howard	34	D	C. W. Howard	34	D	C. W. Howard	37 1/4	D				
80	L. M. Alexander	72	D	L. M. Alexander	72	D	L. M. Alexander	72	D	L. M. Alexander	72	D	L. M. Alexander	60	D				
130	T. E. Nash	145	D	T. E. Nash	145	D	T. E. Nash	145	D	T. E. Nash	145	D	T. E. Nash	97 1/4	D				
45	F. Garrison	46	D	F. Garrison	46	D	F. Garrison	46	D	F. Garrison	46	D	F. Garrison	33 1/4	D				
22	E. T. Harmon	54	D	E. T. Harmon	54	D	E. T. Harmon	54	D	E. T. Harmon	54	D	E. T. Harmon	42 1/4	D				
35	John Daly		D	John Daly		D	John Daly		D	John Daly		D							
50	Geo. A. Whiting	72	D	Geo. A. Whiting	72	D	Geo. A. Whiting	72	D	Geo. A. Whiting	72	D	Geo. A. Whiting	35	D				
30	C. A. Babcock		D	C. A. Babcock		D	C. A. Babcock		D	C. A. Babcock		D	C. A. Babcock	25					
20	A. M. Pride	18	D	A. M. Pride	18	D	A. M. Pride	18	D	A. M. Pride	18	D	A. M. Pride	15	D				
	C. B. Pride		D			D			D			D							
100	D. R. Davis	81	D	D. R. Davis	81	D	D. R. Davis	81	D	D. R. Davis	81	D	D. R. Davis	75	D				
30	B. F. Nelson	29					B. F. Nelson		D	B. F. Nelson		D	B. F. Nelson	22 1/4	D				
60	W. L. Edmonds	54	D	W. L. Edmonds	54	D	W. L. Edmonds	54	D	W. L. Edmonds	54	D	W. L. Edmonds	45	D				
18	E. A. Edmonds	45	D	E. A. Edmonds	45	D	E. A. Edmonds	45	D	E. A. Edmonds	45	D	E. A. Edmonds	36	D				
30	N. H. Brokaw		D	N. H. Brokaw		D	N. H. Brokaw		D	N. H. Brokaw		D							
													A. C. Bosnard	30	D				
													C. I. McNair	60	D				
													F. M. Aiken	21	D				
													W. B. Murphy	28	D				
													F. D. Naber	28	D				
													M. H. Bailou	54	D				
													E. P. Sherry	28	D				
				Treasury	28		Treasury	28											
				H. M. French	1	D	H. M. French	1					W. Z. Stuart	1	D				
1000		1000	17		1000	17			1000	17				1000	22				

* Stock was also paid for on this basis.

Direct- ors	STOCKHOLDERS DECEMBER 10, 1901	Shares	Direct- ors	STOCKHOLDERS DECEMBER 9, 1902	Shares	Direct- ors	STOCKHOLDERS DECEMBER 8, 1908	Shares	Direct- ors	STOCKHOLDERS DECEMBER 18, 1904	Shares	Direct- ors
D	J. A. Kimberly }		D	J. A. Kimberly.....	125	D	J. A. Kimberly.....	125	D	J. A. Kimberly.....	125	D
D	J. C. Kimberly }	200	D	J. C. Kimberly.....	8 $\frac{1}{4}$	D	J. C. Kimberly.....	4 $\frac{1}{4}$	D	J. C. Kimberly.....	4 $\frac{1}{4}$	D
D	W. Z. Stuart }		D	H. Babcock.....	5		H. Babcock.....	5		H. Babcock.....	5	
	F. C. Shattuck }						F. J. Sensenbrenner.....	4	D	F. J. Sensenbrenner.....	4	D
D	J. S. VanNortwick.....	90	D	J. S. VanNortwick.....	86 $\frac{1}{4}$	D	J. S. VanNortwick..	86 $\frac{1}{4}$	D	J. S. VanNortwick.....	86 $\frac{1}{4}$	D
D	C. W. Howard.....	34	D	C. W. Howard.....	37 $\frac{1}{2}$	D	C. W. Howard.....	37 $\frac{1}{2}$	D	C. W. Howard.....	37 $\frac{1}{2}$	D
D	L. M. Alexander.....	72	D	L. M. Alexander.....	60	D	L. M. Alexander.....	60	D	L. M. Alexander.....	60	D
D	T. E. Nash.....	145	D	T. E. Nash.....	97 $\frac{1}{2}$	D	T. E. Nash.....	97 $\frac{1}{2}$	D	T. E. Nash.....	97 $\frac{1}{2}$	D
D	F. Garrison.....	46	D	F. Garrison.....	33 $\frac{3}{4}$	D	F. Garrison.....	33 $\frac{3}{4}$	D	F. Garrison.....	33 $\frac{3}{4}$	D
D	E. T. Harmon }		D	E. T. Harmon.....	42 $\frac{1}{4}$	D	E. T. Harmon.....	42 $\frac{1}{4}$	D	E. T. Harmon.....	42 $\frac{1}{4}$	D
D	John Daly }	54	D						D			D
D	Geo. A. Whiting }		D	Geo. A. Whiting.....	35	D	Geo. A. Whiting.....	35	D	Geo. A. Whiting.....	35	D
D	C. A. Babcock }	72	D	C. A. Babcock.....	25	D	C. A. Babcock.....	25	D	C. A. Babcock.....	25	D
D	A. M. Pride.....	18	D	A. M. Pride.....	15	D	A. M. Pride.....	15	D	A. M. Pride.....	15	D
D	D. R. Davis.....	81	D	D. R. Davis.....	75	D	W. L. Davis.....	75	D	W. L. Davis.....	75	D
	B. F. Nelson.....	...	D	B. F. Nelson.....	22 $\frac{1}{2}$	D	B. F. Nelson.....	22 $\frac{1}{2}$	D	B. F. Nelson.....	22 $\frac{1}{2}$	D
D	W. L. Edmonds.....	54	D	W. L. Edmonds.....	45	D	W. L. Edmonds.....	45	D	W. L. Edmonds.....	45	D
D	E. A. Edmonds }		D	E. A. Edmonds.....	36	D	E. A. Edmonds.....	36	D	E. A. Edmonds.....	34	D
	N. H. Brokaw }	45							D	J. H. Dellbridge.....	1	D
				A. C. Bossard.....	30	D	A. C. Bossard.....	30	D	A. C. Bossard.....	30	D
				C. I. McNair.....	60	D	C. I. McNair.....	60	D	C. I. McNair.....	60	D
				F. M. Aiken.....	21	D	F. M. Aiken.....	21	D	L. H. Cheeseman.....	21	
				W. B. Murphy.....	28	D	W. B. Murphy.....	28	D	W. B. Murphy.....	28	D
				F. D. Naber.....	28	D	F. B. Naber.....	28	D	F. D. Naber.....	28	D
				M. H. Ballou.....	54	D	M. H. Ballou.....	54	D	M. H. Ballou.....	53	D
				E. P. Sherry.....	28	D	E. P. Sherry.....	27	D	S. E. Smith.....	1	D
							E. A. D. Reynolds.....	1	D	E. P. Sherry.....	27	D
										E. A. D. Reynolds.....	1	
										Geo. W. Mead.....	1	D
	Treasury.....	28										
D	H. M. French.....	1		W. Z. Stuart.....	1	D	W. Z. Stuart.....	1	D	W. Z. Stuart.....	1	D
17		1000	17		1000	22		1000	25		1000	25

SUBSCRIPTIONS MAY 31, 1902	Date of contract with Great Paper Co.	CONTRIBUTOR COMPANY
W. A. Kimbrell	July 5, 1901	Kimbrell & Clark Co.
J. C. Kimbrell	July 5, 1901	Kimbrell & Clark Co.
W. A. Kimbrell	July 5, 1901	Kimbrell & Clark Co.
F. C. Shattuck	July 5, 1901	Shattuck & Co.
D. E. Hearn	July 5, 1901	Hearn & Co.
G. W. Howard	July 5, 1901	Howard & Co.
J. M. Alexander	July 5, 1901	Alexander & Co.
T. E. Nash	July 5, 1901	Nash & Co.
F. Garrison	July 5, 1901	Garrison & Co.
R. T. Hearn	July 5, 1901	Hearn & Co.
John Daly	July 5, 1901	Daly & Co.
G. A. Whitely	July 5, 1901	Whitely & Co.
C. A. Haddock	July 5, 1901	Haddock & Co.
A. M. Pidge	July 5, 1901	Pidge & Co.
B. H. Davis	July 5, 1901	Davis & Co.
E. F. Nelson	July 5, 1901	Nelson & Co.
W. I. Edwards	July 5, 1901	Edwards & Co.
E. A. Edwards	July 5, 1901	Edwards & Co.
N. H. Bishaw	July 5, 1901	Bishaw & Co.
J. M. Hearn	February 5, 1902	Hearn & Co.
Northwest Paper Co.	April 8, 1902	Northwest Paper Co.
P. M. Co.	July 14, 1902	P. M. Co.
Riverside P. & T. Co.	December 1, 1902	Riverside P. & T. Co.
Wolf River P. & T. Co.	December 1, 1902	Wolf River P. & T. Co.
Mammoth Paper Co.	December 1, 1902	Mammoth Paper Co.
Pamphlet Paper Co.	December 1, 1902	Pamphlet Paper Co.
Hampden Paper Co.	August 31, 1902	Hampden Paper Co.
Consolidated War P. Co.	July 31, 1902	Consolidated War P. Co.
Frederick Block		Frederick Block
Sales Men and Vice Pres.		Sales Men and Vice Pres.

would produce so many newspapers to the pound. These abuses, it was testified, had been corrected since the organization of the General Paper Company. (Transcript of Record, pages 339 to 341.)

In addition to the above facts divulged by the witness, the following facts were admitted upon the record: (Transcript of Record, page 301.)

“For the purposes of this action only, the several corporations represented in this action by Winkler, Flanders, Smith, Bottum & Fawsett, Defrees, Brace & Ritter, and John Barnes, admit that all subscriptions of stock to the General Paper Company and made by the individual subscribers therefor from time to time, were made for and on behalf of some paper manufacturing corporation with which each of such individuals was connected, and that the stock issued to such individuals was, with the exceptions hereinafer stated, paid for at or about the time when such subscriptions were made and the stock taken by the several persons for said mill corporations respectively, with the moneys of said defendant corporations with which such individuals were respectively connected, and that such corporations thereby became and have continuously

remained the beneficial owners respectively of the stock so issued to such individuals, and dividends declared upon the stock were the property of such corporations respectively; that said stock was from time to time allotted to such corporations as should make contracts with the General Paper Company in the form of those contracts actually executed which have been received in evidence in this case creating it their exclusive selling agent of the kinds and grades of paper mentioned in such contracts, and upon the basis of the estimated relative productions of such kinds and grades of paper made by the mill corporations represented, and that all subscriptions by, and allotments of stock to such mill corporations were made approximately on said basis; that the exceptions above referred to are as follows: the stock of E. A. Edmonds of the Rhineland Paper Company, the stock held by John S. Van Nortwick and William N. Van Nortwick, the stock of the Combined Locks Paper Company, the stock of George W. Mead of the Consolidated Water Power and Paper Company, and the stock of W. Z. Stuart. The said defendants will produce, as a part of this

admission, and consent that the same be filed or incorporated in the record, a correct list of the individuals to whom stock was issued with the names of the corporations respectively represented by said individuals, the dates of the issuance of the stock to said individuals for their respective corporations, together with copies of all outstanding certificates of stock, and all endorsements thereon, and assignments thereof, and a statement showing how and by whom the said certificates are now held."

The statement last referred to was furnished and appears as Petitioner's Exhibit 150 attached to the record in the case of *Harmon v. United States*, page 160.

After the examination of the witnesses Alexander, Whiting and Stuart had been suspended for the purpose of making an application to the court to compel them to answer questions, and before such application was made, the Government produced and examined certain other witnesses.

The witness Adam Brown, formerly vice-president of the defendant The C. W. Howard Company, testified to the existence of a pool among the corporations defendant manufacturing a grade of

paper known as "butcher's fibre." It appeared from the testimony of this witness that this grade of paper, being less profitable to manufacture than other grades handled by and through the General Paper Company, it was agreed that the mill or mills engaged in its manufacture should be compensated therefor by the other fiber mills in the General Paper Company, the basis of such compensation being fixed by statements issued from time to time by and through the General Paper Company. (Trans. of Record, page 365 *et seq.*)

The witness, John C. Brocklebank, western manager of the Manufacturers Paper Company, a paper selling agency with offices at Chicago, Illinois, testified that shortly prior to the organization of the General Paper Company, the parties who finally effected its organization held a meeting in Chicago with him and another representative of the Manufacturers Paper Company, at which they endeavored to reach an agreement whereby the Manufacturers Paper Company should become the exclusive selling agent for the manufacturing corporations which afterwards contracted with the General Paper Company. The witness testified that the object of the negotiation, as expressed at the meeting, was to eliminate competition among the

various mills concerned and thereby remedy what they regarded as abuses in the trade, namely, low prices for their product and certain conditions favorable to consumers. The parties to this conference failed to agree because the representatives of the Manufacturers Paper Company refused to turn over to the mill owners a majority of the stock of that company. (Trans. of Record, pages 396-462.)

In the case of the witness Harmon, the situation differs only in minor particulars from that in the case of the other witnesses called in the Wisconsin Circuit. Between the suspension of the examination of the witnesses Alexander, Whiting and Stuart and the calling of the witness Harmon, there intervened not only the testimony of the witnesses Brown and Brocklebank, already mentioned, but the testimony of several newspaper publishers, tending to establish two principal facts: (1st) that, after the organization of the General Paper Company, all competition among the other defendants in the sale of news print paper ceased; (2d) that, in making sales of news print paper, the General Paper Company, through its officers and agents, fixed the price and determined all of the conditions of sale without reference to the mills which manufactured the

paper. The witness Harmon was a director of the General Paper Company, and was the president and manager of the defendant Grand Rapids Pulp and Paper Company, and a stockholder of the defendant Centralia Pulp and Water Power Company.

Subsequently and on the 15th day of July, 1905, a hearing was had before the examiner at St. Paul, Minnesota, at which the plaintiffs in error, Benjamin F. Nelson, president of the Hennepin Paper Company and director of the General Paper Company, Anselm C. Bossard, treasurer and manager of the defendant Itasca Paper Company and director of the General Paper Company, and Clarence I. McNair, general manager of the defendant Northwest Paper Company and director of the General Paper Company, were called as witnesses. They appeared in obedience to *subpoenas duces tecum* issued by the United States Circuit Court for the District of Minnesota, directing them to produce before the examiner the books and papers herein-after more particularly referred to. (Trans. of Record in Minnesota cases, pages 33 to 38.

Coming now to the subject of the refusals on the part of the witnesses to answer questions, or permit the use of books and papers called for in the subpoenas, there are two features of the situation

to which we wish to call attention at the outset: First, the books and papers in every instance were either actually in court before the examiner, or it was agreed by the witness and his counsel that they might be considered as actually in court. Second, the objections made before the examiner to the questions and requests which are not answered or complied with, were concerned entirely with the admissibility of the evidence called for, and did not suggest any question of personal privilege. The plea of privilege was subsequently raised in the answers filed to the orders to show cause. Before the examiner, counsel for the defendant simply took the witness absolutely under his control, assumed to pass finally upon the competency, materiality and relevancy of the evidence sought to be adduced, and peremptorily instructed the witness to decline to answer or comply. We shall hereafter enter upon a detailed examination of the refusals. It is only necessary at this point to state that as soon as it became apparent that every avenue of progress in the examination of the witness was effectually blocked by the instructions of his counsel, the examination was in each instance suspended at the request of counsel for the Government, in order that application might be made to the court for orders directing the witnesses to answer.

The order to show cause in the first proceedings in the Wisconsin Circuit issued upon the petition of the Government (Trans. of Record, pages 41 to 54) was returnable June 6, 1905. On that date the witnesses Alexander, Whiting and Stuart appeared in person and by their counsel, and, after argument occupying that day, the hearing was adjourned at the request of counsel for the various respondents, to be resumed on June 14, 1905. At the hearing on June 14, 1905, answers to the order to show cause were filed (Trans. of Record, pages 55 to 61), briefly setting up matter designed to raise any question of privilege which might be pleaded by the General Paper Company or by the witnesses respectively. After the decision of the court directing the witnesses to answer had been filed, and at the time application was made to appeal, leave was asked and granted to file amended answers setting up the questions of privilege more fully. (Trans. of Record, pages 64 to 84.) Subsequently when the appeal was allowed in the case of the witness Harmon, leave was again asked to amend the original answers, and a third set of answers was filed for the witnesses Alexander and Whiting. (Trans. of Record, pages 85 to 98.) As these last answers assumed to set out finally and completely the defenses imposed by the respondents, we may consider them alone and ignore the others.

After the hearing above mentioned, the United State Circuit Court for the District of Wisconsin made an order directing the witnesses Alexander, Whiting and Stuart to answer and to produce the evidence called for; and thereupon appeals were allowed and taken from that order by each of the said witnesses and by the General Paper Company.

Later, a similar order to show cause was issued by the same court, as to the witness Harmon. The answer interposed by the witness is a counterpart of those filed by the other witnesses; and an order directing him to answer and to produce evidence was also made. From this last order an appeal was allowed and taken by the witness Harmon and the General Paper Company.

Similar proceedings were had in the Minnesota Circuit, upon refusal of the witnesses Nelson, Bossard and McNair to answer before the examiner. An order was issued directing the witnesses to appear and show cause why they should not be required to answer and to produce the books and papers called for. After hearing, the court ordered the witnesses to reappear before the examiner and answer the questions and comply with the requests to produce evidence which had been made. From this latter order the court refused to allow an appeal. (Trans.

of Record in Minn. cases, page 54.) Whereupon, the witnesses still persisting in their refusals (Trans. of Record in Minn. cases, page 56), and that fact being reported to the court, contempt proceedings were instituted against them, resulting in the adjudication of contempt, in accordance with which they were severally fined in the sum of \$100, and sentenced to jail until such fine should be paid and until they should each comply with the order of the court.

The answers interposed by the plaintiffs in error, Nelson, Bossard and McNair, in the contempt proceedings against them, were exactly the same as their returns to the order to show cause, and set up the same defences as were urged by the appellants Alexander, Whiting, Stuart and Harmon in their returns to the orders to show cause in the Wisconsin Circuit. These defences we are now to consider.

The witnesses first attempted to plead a privilege, in behalf of the corporations which they represented, not to have the books and papers produced and the questions under consideration answered. It was alleged that the books and papers were in the possession of the witnesses only as officers of the several companies represented by them, and that the information sought to be adduced by

the questions came to their knowledge only as such officers. It was then alleged that the companies objected to the production of the books and papers, and to the answering of the questions, upon four grounds, namely:

First, that the matters called for had not been shown to be material, relevant or competent evidence in the cause;

Second, that one of the purposes sought to be furthered by the production of the books and papers, and the securing of the information called for, was to compel the General Paper Company and the other defendants to furnish evidence tending to establish that they had been guilty of violations of the Act of July 2, 1890, and that, to compel them to furnish this evidence through their officers would be contrary to the provisions of the Fourth and Fifth Amendments to the Constiution of the United States;

Third, that the production of the evidence called for would tend to establish violations of the laws of the State of Wisconsin (in the cases of the witnesses called in that state), and of the State of Minnesota (in the cases of the witnesses called in that state), on the part of the General Paper Company and the other defendants, and that, to compel them, through their officers, to furnish such evi-

dence, would also be contrary to the Fourth and Fifth Amendments to the Constitution of the United States;

Fourth, that the decree sought by the Government against the defendants would render inoperative and of no value the agency-contracts between the General Paper Company and the other defendants, and that, therefore, to compel the corporations to produce evidence tending to that end would be to compel the defendants to give testimony which might subject them to forfeitures, or something in the nature of a forfeiture or penalty, contrary to the rules of common-law and equity jurisprudence.

Finally, the respondents pleaded their own personal privilege, alleging as a basis therefor three grounds, namely:

First, that to compel the production of the evidence called for would be to compel them to furnish evidence tending to establish that they had been guilty of violations of the federal laws, contrary to the Fourth and Fifth Amendments to the Constitution of the United States;

Second, that to compel them to produce the evidence called for would tend to establish violations by them of the laws of the State of Wisconsin (in the cases of the witnesses called in that state), and

of the state of Minnesota (in the cases of the witnesses called in that state), thereby compelling them to give evidence against themselves, contrary to the Fourth and Fifth Amendments to the Constitution of the United States;

Third, that the production of the evidence called for would tend to establish the allegations of the original petition in the cause, which, if established, would result in subjecting the respondents, as stockholders of the General Paper Company and other defendant companies, to loss or detriment in the nature of a penalty or forfeiture, and would, therefore, be compelling them to give testimony against themselves, contrary to the Fourth and Fifth Amendments to the Constitution of the United States and to the rules of common-law and equity jurisprudence.

In dealing with the questions of law which arise upon this record, we shall consider, first, the questions of evidence raised by the objections that the evidence called for is incompetent and immaterial to the issues. We shall then consider the questions of privilege finally set up by the respondents in their answers to the orders to show cause.

I.

IN THE ABSENCE OF ANY PERSONAL PRIVILEGE TO THE CONTRARY, THE EVIDENCE SOUGHT FOR SHOULD BE PRODUCED AND GIVEN BEFORE THE EXAMINER.

(A) *Whether finally admissible or not, the evidence should be given and received before the examiner, inasmuch as all questions of materiality, relevancy and competency must be left primarily for determination upon final hearing by the United States Circuit Court for the District of Minnesota where the cause is pending, and ultimately for decision by this court when the suit shall be considered here on appeal.*

Let us first consider what questions are brought to this court by an appeal from the order and judgment of the Circuit Court for the Eastern District of Wisconsin, and by the writ of error from the final judgment of conviction for contempt in the Circuit Court for the District of Minnesota.

These cases are brought to this court solely because they involve a right pleaded by the witnesses under the Constitution of the United States. Court

of Appeal Act, being Act of March 3, 1891, U. S. Comp. Stat. 1901, § 5, p. 549; Act to expedite cases brought under the Interstate Commerce Act and Sherman Act, being Act of February 11, 1903, § 2.

Had the witnesses, instead of appealing from the order and taking a writ of error from the judgment of contempt, sued out a writ of habeas corpus, this court would have had jurisdiction on appeal from a judgment discharging the writ. *Ekin v. United States*, 142 U.S. 651; *Horner v. United States*, 146 U. S. 120. And it is only the question of the validity of the judgment overruling their plea under the constitution that can be considered. *In Re Tyler*, 149 U. S. 164; *In Re Lennon*, 166 U. S. 552. A writ of error from the judgment of contempt will bring up no other question. *Bessette v. Conkey*, 194 U. S. 324.

These witnesses set up a privilege under the Fourth and Fifth Amendments to the Constitution, and, this question being finally disposed of by the decision against them, can be reviewed in this court, and no other question. This court cannot pass upon the relevancy or materiality of the evidence.

These witnesses are not interested in the question of whether the testimony is material or not, but only in the question of whether their personal privi-

leges have been violated. The court will not review a mere interlocutory order or ruling upon the relevancy of the testimony, nor consider the sufficiency of the description of the books and documents sought to be produced in a *subpoena duces tecum*, nor the question of whether the complaint sufficiently states a cause of action. All these questions will be disposed of by the final decree. But, as these defendants have brought to this court the entire record, and have raised and argued questions of the relevancy and materiality of the evidence, we deem it advisable to submit our views thereupon.

In the absence of any personal privilege to the contrary, it was the duty, both of the Circuit Court for the Eastern District of Wisconsin and of the Circuit Court for the District of Minnesota, to direct the witnesses within their respective jurisdictions to answer, even if they should be of the opinion that the evidence in question would be finally declared inadmissible. The procedure of taking testimony before a master or examiner has been firmly established by the rules of this court. Under that practice it is obviously impossible to have questions of the admissibility of the evidence determined as they arise. The master or examiner cannot determine them, for his authority never goes to that

length. His duty is to take and report all of the testimony offered, with the objections made by the parties. The only forum which can pass upon these objections is that in which the cause is pending and which must finally decide the issues between the parties. Not only this, but even where the court of first instance regards the testimony as inadmissible the settled rule of the federal courts is that it must, nevertheless, be included in the record. This follows inevitably from the fact that equity causes go to the court of last resort by appeal and not by writ of error. Although the appellate tribunal is the judge of the facts as well as the law, no new evidence can there be received, and it is not the custom or practice, since the promulgation of the amended equity rules, to send equity causes back for the taking of additional testimony. The rule was definitely laid down in *Blease v. Garlington*, 92 U. S. 1. That was a suit for the foreclosure of a mortgage, and upon the hearing in the court below the defendant presented himself as a witness to be examined orally in open court and proposed to testify to certain facts. The court refused to receive his testimony, and it was not begun. After a decree in favor of the complainant the case was brought to the Supreme Court by appeal. The court said:

“While, therefore, we do not say that, even since the Revised Statutes, the circuit courts may not in their discretion, under the operation of the rules, permit the examination of witnesses orally in open court upon the hearing of cases in equity, we do say that now they are not by law required to do so; and that, if such practice is adopted in any case, the testimony presented in that form must be taken down, or its substance stated in writing, and made part of the record or it will be entirely disregarded here on an appeal. So, too, if the testimony is objected to and ruled out, it must still be sent here with the record, subject to the objection, or the ruling will not be considered by us. A case will not be sent back to have the rejected testimony taken, even though we might, on examination, be of the opinion that the objection to it ought not to have been sustained. Ample provision having been made by the rules for taking the testimony and saving exceptions, parties, if they prefer to adopt some other mode of presenting their case, must be careful to see, that it conforms in other respects to the established practice of the court.”

The rule of *Blease v. Garlington* has never been changed. Here was a case where testimony offered in open court, where a suit was pending, was excluded from the record. The Supreme Court declared in the clearest and most emphatic manner that the circuit court should have included the testimony in the record in order that its ruling thereon might be subject to review.

The rule above adverted to would be directly applicable to the situation which might arise on the final hearing of this cause before the United States Circuit Court for the District of Minnesota. If that court should by any possibility be of the opinion that any of the evidence adduced or sought to be adduced, whether within or without the district, was inadmissible for any reason, it would nevertheless be compelled to have such evidence received and incorporated into the record for the use of this court. *A fortiori*, the rule is applicable to the situation existing in the Circuit Court for the Eastern District of Wisconsin.

The objections interposed by counsel for the defendants, as the ground for refusal, raised questions of law which will ultimately have to be considered by any tribunal to which the cause may be taken on appeal. The court in Wisconsin is not

even the appropriate tribunal for their decision in the first instance. That function rests with the Circuit Court for the District of Minnesota. If these witnesses are permitted to persist in their refusals to answer, upon the grounds stated, the Circuit Court in Wisconsin will have assumed to pass finally upon substantial questions of law in a cause not pending before it. Although the witnesses sought to be examined in the cause are personally subject to the jurisdiction of that court, the case itself is not. The aid of the court, has, to be sure, been invoked to compel the attendance of witnesses before the examiner, but for that purpose and to that extent only. The court in Wisconsin is concerned only with compelling obedience to its duly issued writ of subpoena. If it be urged that in considering the question of compelling such obedience the court must necessarily pass upon the admissibility of the evidence, we say that the decision in *Blease v. Garlington* is a complete answer to that suggestion. The court cannot by any possibility consider these questions. Its only course is to direct the witnesses to obey its subpoenas by answering the questions put to them and producing the books and papers called for. We concede that the court in Wisconsin may protect the witnesses within its jurisdiction against

violation of their personal and constitutional privileges. That branch of the subject, however, will be dealt with later. The rule of *Blease v. Garlington* has been interpreted and applied in the following cases:

Thomson-Houston Elec. Co. v. Jeffrey Mfg. Co., 83 Fed. 614.

Maxim-Nordenfelt Guns & Am. Co. Ltd. et al. v. Colt's Patent Firearms Mfg. Co., 103 Fed. 39.

Parisian Comb Co. v. Eschwege, et al., 92 Fed. 721.

Fayerweather, et al. v. Ritch, et al., 89 Fed 529.

Appleton v. Ecaubert, 45 Fed. 281.

Edison Elec. Lt. Co. v. U. S. Elec. Ltg. Co., 45 Fed. 55, 59.

Johnson Steel Street Rail Co. v. North Branch Steel Co., 48 Fed. 196.

Adee v. J. L. Mott Iron Works, 46 Fed. 39.

Lloyd v. Pennie, 50 Fed. 4.

Brown v. Worster, 113 Fed. 20.

MacWilliam v. Conn. Web. Co., 119 Fed. 509.

Whitehead & Hoag Co. v. O'Callahan, 130 Fed. 243.

The only case we have been able to find in the reports giving a contrary view to that indicated in the authorities above cited is *In Re Allis*, 44 Fed. 216. There the court had before it an application for an order to require a certain witness to produce documents and answer interrogatories before an examiner in a suit pending in the Circuit Court of the United States for the District of Minnesota. The witness was not himself a party to the suit. Judge Jenkins held that the court, having jurisdiction of the witness, had power to judge of the materiality and pertinency of evidence in considering an application of this kind. His opinion discussed the subject as if the question raised was one of personal privilege. Moreover, the case of *Blease v. Garlington* does not appear to have been called to his attention, and he rested his decision upon two cases decided in 1853, more than ten years prior to the amendment of equity rule sixty-seven, and more than twenty years prior to the decision in *Blease v. Garlington*. Furthermore, the first of the cases relied upon, namely, *In Re Judson*, 3 Blatchford 148, Fed. Cases No. 7563, was one where the witness, an attorney, pleaded that the question called for the disclosure of a privileged communication between him and his client. The other case, that of *Ex Parte Peck*, 3 Blatchford 113,

Fed. Cases No. 10,885, went off on another point, namely, the lack of proof of jurisdiction in the officer before whom the examination was had.

(B) The evidence called for is admissible.

The refusals of the several witnesses are so numerous that we have found it desirable to classify them, as far as possible, under a few general headings based upon the subject matter to which they relate. As an appendix to this brief, we have printed this classification, and shall refer thereto from time to time in this sub-division of the brief.

1. Questions put and requests made with reference to the record book of the defendant General Paper Company.

A great many of the refusals scheduled with reference to the witness Alexander's testimony related to the record book of the defendant General Paper Company. This applies to the refusals numbered from 1 to 25 inclusive, 35, 38, 39, 40 to 44 inclusive, 72 to 79 inclusive. This book was the official record of all the meetings of the stockholders and directors of the General Paper Company from the time of its organization to the present time. This book was produced by the witness Alexander, who

is Secretary of the Company, and who kept it and had charge of it. (Transcript of Record, p. 140.)

"Q. You are the Secretary of the General Paper Company, are you not?

A. I am.

Q. And Treasurer of the General Paper Company?

A. Yes, sir.

Q. As Secretary you have charge of the minute book containing the records of the meetings of the board of directors and stockholders of the company?

A. Yes, sir."

After some further questioning with regard to a particular meeting reported in said book, the examination proceeded (page 141):

"Q. Were there minutes kept of that meeting?

A. I think so.

Q. Have you those minutes?

A. I think so.

Q. Will you produce them please?

Mr. Flanders: You have got them here, you mean?

A. Yes, sir.

Mr. Flanders: Well, hand them over to me, please.

(Witness leaves stand to get records.)"

Again, on page 148, the same witness testified:

"Q. You are the Secretary of this company, at the present time, are you not?

A. I am.

Q. And the records are in your charge, are they not?

A. They are."

Again, on page 153, the witness testified:

"Q. Where is the office of the General Paper Company in this town?

A. In the Wells building.

Q. Is that your office?

A. Yes, sir.

Q. Do you keep there the records of the meetings of the board of directors and stockholders of this company?

A. Usually I do."

We have quoted from the testimony on this subject for the reason that throughout the examination of this witness the counsel for the defendants took

the position that this book was not in the possession of the witness and had not been produced by him, but on the contrary, was in the possession of Mr. James G. Flanders, counsel for the General Paper Company. This and other books under the care and control of the witness as an officer of the General Paper Company had been turned over to Mr. Flanders some time prior to the hearing, although it definitely appears that so far as some of the other books were concerned, at any rate, the witness actually brought them to the hearing from Mr. Flanders's office and left them in his seat when called to the stand. He went and got the record book, as above appears, when it was called for, and then turned it over to Mr. Flanders in the presence of the examiner. (Transcript of Record, pgs 140 to 141.) The attitude of counsel for the defendants on this subject is well illustrated by his statements made on pages 148, 149, 150, 155 and 261.

Page 148:

"Do you refuse to produce the record of the meeting of the board of directors showing Mr. Alexander's election as Vice President of the General Paper Company—or Mr. Stuart's as Vice President of the General Paper Company?"

Mr. Flanders: Under the direction of counsel for the General Paper Company the witness states that the record books—

Mr. Kellogg: Now wait, the witness does not state that.

Mr. Flanders: Now, the witness does state it. We will have this taken down or we will stop right here, whichever you have a mind to. Whatever I say is to go in the record.

Mr. Kellogg: All right, say it.

Mr. Flanders (continuing his statement): —and papers of the General Paper Company are in the general charge of James G. Flanders, counsel for the General Paper Company, who now has that record book in his possession, and under the direction of counsel he declines to open that book generally to the inspection of counsel upon the other side, either at this meeting or at any other time, in the present state of the record, and offers now to read this portion of this meeting relating to the election of Mr. Stuart as second vice president of the General Paper Company, or to submit that portion of that meeting to the inspection of counsel. Is that your answer?

Do you adopt that answer?

Witness: I do."

Page 150:

"Mr. Flanders: Now this book is in my possession and you will take it as I give it to you or not at all."

Bottom of page 155:

"Mr. Flanders: Mr. Alexander will read nothing from any books in my possession without my permission. And you adopt that position, do you, Mr. Alexander?

Witness: I do."

The witness Alexander either produced this book or he did not produce it. If he did not produce it at all, he has clearly disobeyed the subpoena. If he did produce it in the first instance and then turned it over to counsel for the defendants in the presence of the examiner, we cannot see but that in effect such a proceeding is as much a violation of the writ as if he had not produced the book at all.

In *Edison Electric Light Co. v. U. S. Electric Lighting Co.*, 44 Federal, 294, it was distinctly held that a party cannot excuse non-compliance with a subpoena *duces tecum* commanding him to produce documents unprivileged in his own hands, by showing that he has delivered them into the hands of his

counsel. Moreover, the possession by an agent or attorney or partner, is possession by the person himself. *Russell v. McLellan*, Fed. Cases No. 12158, and cases there cited.

We submit that the record book in question was produced and remained in the power and control of the witness Alexander during all of the time that he was testifying. The mere fact that, as appears from the testimony, he passed it over to counsel whenever he was asked any question calling for an inspection of it or a reading from it, cannot excuse him in the slightest degree. The possession of counsel was the possession of Mr. Alexander. We do not believe the court should countenance the contention that a witness may deliberately, and in the presence of an officer of the court, relinquish from his physical possession any book or paper which is once produced before the examiner, and relinquish it, as is abundantly apparent from the testimony, for the avowed purpose of making a technical plea in answer to questions put to him, that he is unable to produce the record and make full answer thereto. If such trifling expedients may be resorted to in legal proceedings before one of its officers, it is clear the dignity of the court is a mere name, and its process cannot command respect.

It will be seen that the witness Alexander not only refused to permit counsel for the government to inspect the record book, but that he refused to testify from it or permit it in any way to be offered in evidence except in a most fragmentary manner. Only such portions of the book could be used as the counsel for the General Paper Company saw fit to disclose. The witness, at his suggestion, even refused to inspect the book to refresh his own recollection. (Refusal No. 35, Transcript pages 273, 274). At one point in the examination it appeared from the testimony of the witness that a committee was appointed at the annual meeting of the stockholders in December, 1901, to take legal advice and report upon a proper plan for the completion of the subscriptions and paying up in full of the capital stock. After consenting to read the minutes relating to the appointment of the committee, the witness was asked to read the report of the committee. He thereupon started to read, and after reading what purported to be a part of the committee's report, he was stopped by counsel for the defendants. (Transcript, pages 205, 206). He admitted, in response to later questions, that he had not read all of the report, and flatly refused, under advice of his counsel, to read the rest of it. He admitted that he had the book

before him when he stopped reading, and that it was taken away from him by counsel for the defendants. (Transcript, pages 206, 208). The witness repeatedly refused to permit counsel for the government to inspect the record or any portion thereof, with a view to determining the accuracy of his own statements or those of his counsel relating to the contents.

The attitude of counsel for the defendants in relation to this record book seems entirely unwarranted by any principle of evidence which we have been able to discover. It must be borne in mind that the charge under investigation is one of conspiracy and combination on the part of twenty-three defendant corporations. This combination took on the outward semblance of a further corporation, the defendant General Paper Company. The combination and conspiracy to suppress competition among themselves and to restrain trade and commerce was effectuated and has been carried on under the guise and through the medium of this corporation known as the General Paper Company. Every act of the General Paper Company is therefore an act related to and in furtherance of the conspiracy and combination; every act of the Company is, to all intents and purposes, the act of the conspirators themselves; every act of that Company is therefore necessarily

proper and material evidence for the purpose of this inquiry. What evidence could exist which would have a more direct bearing upon the principal issue in the cause than these minutes of the meetings of the General Paper Company? They are *par excellence* the direct, as distinguished from the indirect or circumstantial, evidence of the combination and conspiracy. Here we have twenty-three competing manufacturing corporations getting together through their principal officers, and organizing a selling corporation to act as the exclusive sales agent for them all. Each manufacturing corporation has one representative on the board of directors of the selling company; each manufacturing corporation takes stock in the selling company in proportion to its output; each manufacturing corporation enters into the same contract, word for word, with the selling company, surrendering the right to sell its product. It would be difficult, we believe, to imagine a more complete *prima facie* case of combination and conspiracy to eliminate competition and restrain trade and commerce. This being so, the acts of the conspirators in furtherance of the combination and conspiracy, as evidenced by the minutes of the General Paper Company, are, under all of the authorities, clearly admissible. If the book had not been produced be-

fore the examiner at all, its production could have been compelled, and the use of its contents secured by an order to show cause supported by a proper affidavit of counsel for the government that the book was material.

Coit v. North Carolina Gold Amalgamating Co., 9 Fed. 577.

The rule is settled that where the existence of the books and papers desired is established, the ability to produce them is shown, and the books and papers are apparently important and material to the case of the moving party, their production will be required. It is obviously impossible in applications of this character to determine the materiality of all of the contents of the books and papers in advance. If the moving party were required to prove to the satisfaction of the court the materiality of such evidence, obviously he would in most cases be without remedy, for the contents of the books and papers in the possession of the opposite party usually cannot be known in advance. All that can be expected is that the books and papers desired shall be accurately designated, and that there should be some showing that they will prove to be material evidence. The rule was laid down by that eminent jurist, Judge Dillon, in the case of *United States v. Babcock*, Fed-

eral Cases No. 14484. That was a petition for an order for a *subpoena duces tecum* directed to one William Orton, not a party to the suit, but an officer of the Western Union Telegraph Company, requiring him to produce the records of his office showing the sending and receipt of telegrams between certain designated persons. Judge Dillon (Treat, District Judge, concurring), said:

“It is to be observed that the District Attorney does state that these papers are material evidence in the case, but whether they are material or not is a question which cannot be determined in advance—that depends upon the actual posture and situation of the case when they come to be offered; and when the District Attorney asserts that they are material papers, we must assume for the present that he is fully informed and that they are material. * * * A court of equity has the power to compel the discovery and production of papers in virtue of its inherent and general jurisdiction.”

In *Coit v. North Carolina Gold Amalgamating Co.*, *supra*, it was held that the production of books and papers in possession of the opposite party might

be required in equity causes on motion supported by affidavit averring their materiality. The court stated that the practice had not been uniform in that respect, and that such motions had been allowed even without the support of an affidavit.

There is no doubt that as a witness a party can be compelled by a *subpoena duces tecum* to produce books, documents, and papers in his possession in the same maner as any other witness. *Bischoffsheim v. Brown*, 29 Fed. 341, 343.

And the officers of a corporation may be required as witnesses to produce its books when the books are necessary evidence.

Wertheim et al. v. Continental Ry. & Trust Co., 15 Fed. 716;

Johnson Steel Street-rail Co. v. North Branch Steel Co., 48 Fed. 196;

Edison Elec. Lt. Co. v. U. S. Elec. Ltg. Co., 44 Fed. 294; 45 Fed. 55.

In *Johnson Co. v. North Branch Co.*, 48 Fed. 191, it appears that the Circuit Court for the Western District of Pennsylvania required a witness, not a party to the suit, to produce certain drawings which seemed to be pertinent to the issue. This was done, although the papers related to a valuable secret method of producing a manufactured article.

The case of *Bloede Co. v. Bancroft & Sons Co.*, 98 Fed. 175, has an important bearing upon this discussion. That was a motion made in an action at law under section 724 of the Revised Statutes, for an order requiring the defendant to produce at the trial, for inspection by the plaintiff and its attorneys and agents, certain books and writings alleged to be in the possession or under the control of the defendant, and to contain certain evidence pertinent to the issues. Briefly stated, the call was for the "books, papers, writings, accounts, day books, blotters, journals, ledgers, cash books, letter books, order books, shipping bill books, invoices of goods bought or received of the defendant, in the possession of the company, its officers, servants or agents," etc., containing entries in relation to certain matters. It was objected by the defendant that there was a fatal loss of particularity in the description of the books and writings of which production was sought. The court said (page 188):

"The plaintiff, from the nature of the case, in the absence of information, and as stated in the supporting affidavit, has not the ability to describe with particularity the books or writings containing evidence pertinent to the issue and referred to in that affidavit. The

defendant, however, can, without difficulty, ascertain and produce the books and writings containing such evidence. To require the plaintiff specifically to point out the books or writings would be to demand of him an impossibility. * * * No reason, therefore, is perceived, why under Section 724, generality in the designation of books or writings is objectionable, if the subject matter to which they relate is specifically mentioned in the motion and notice."

The notice and motion in the *Bloede* case were obviously far more sweeping and general in their terms than the request involved in this application. Here the book is not only specifically designated, but it has been before the examiner and portions of it, at least, have been incorporated in the record. It is further shown that the book contains the record of what took place at the meetings of the directors and stockholders of the General Paper Company. To require the government to designate the particular portions of this book which it regards as necessary to its case, would be to demand of it what the Circuit Court for the District of Delaware would call an impossibility. It is sufficient for the purpose in hand that it should appear that the book contains the rec-

ord of the doings of the various representatives of the manufacturing corporations defendant at meetings of the General Paper Company. These meetings, whether they be stockholders' meetings or directors' meetings, were simply gatherings of the parties to the alleged combination and conspiracy to take action in continuation of and in furtherance of the combination and conspiracy; and the records of the meetings are nothing more nor less than the formally recorded acts of the parties.

The court for the Delaware circuit in the *Bloede* case cites the decision of Judge Dyer sitting for the Eastern District of Wisconsin in the case of *United States v. Three Tons of Coal*, 6 Bissell, 379. There, informations having been filed on behalf of the United States in several cases of seizure under the internal revenue laws, orders were made requiring the claimants in the respective cases to produce certain books and papers for examination by the attorneys of the United States. The proceeding was had under an act of Congress providing that in suits and proceedings arising under the revenue laws, the attorneys representing the government might, whenever in their belief any business book or paper belonging to or under the control of the claimant would tend to prove an allegation made by the United States, make

a written motion for an order requiring the production of such book or paper; whereupon the court at its discretion might issue a notice to the claimant to produce it. The statute in question does not appear to be in any respect broader in its scope than Section 724 of the Revised Statutes, and certainly did not confer upon the court any broader powers than those possessed by a court of equity with regard to the production of books and papers. The motion in the case before Judge Dyer was most general in its character. Nevertheless, it was held to be sufficient. The court said (pages 404, 405):

“Nor do I think I should dismiss these proceedings or vacate the orders made, on the objection that the motion papers do not describe with sufficient particularity the books and papers required. They are specified in the motion as the day-books, blotters, journals, ledgers, cash books, letter books, shipping bill books, and receipts for spirits and liquors shipped, and invoices of spirits and liquors bought or received, used and kept by the parties in their business as distillers or rectifiers, between certain dates named in the written motion. This is a sufficient designation of the books and papers to meet the requirement

of the statute. The books and papers are specified, the business in which they were made, kept and used, is named and dates are given."

That under issues of the character raised in this cause, the entire manner of conducting the business of the General Paper Company is competent and material evidence, is settled by the decision of the Supreme Court of the United States in the recent case of *Interstate Commerce Commission v. Baird*, 194, U. S. 25. There the complaint filed against the defendants before the Interstate Commerce Commission charged that the defendants as common carriers, engaged particularly in the transportation of coal mined in Pennsylvania and other states, and shipped to tide-water, were charging unreasonable and unjust rates, and subjecting consumers and producers of coal who were not common carriers or corporations owned and controlled by common carriers, to undue and unreasonable prejudice and disadvantage in favor of and to the undue and unreasonable preference and advantage of the defendants themselves and companies under their control. After issue was joined, a hearing was had at which certain witnesses refused to produce contracts and answer questions. The contracts

asked for were those between the defendant common carriers and various coal companies owned and controlled by them. Application was made to the Circuit Court to compel the production of the papers and to compel the witnesses to answer the questions. It was objected to on the part of the defendants that the questions did not relate to any subject which the commission had the right to investigate, and that the contracts related to the private business of persons not parties to the proceedings before the commission. The defendants further pleaded that the witnesses were protected by their constitutional privileges, and also that the contracts were not relevant to the subject matter of the investigation before the commission. The Circuit Court decided in favor of the defendants on the application, on the ground that the matters sought to be inquired into were not relevant to the investigation. The Supreme Court of the United States, however, reversed this ruling and held that the evidence was relevant to the issues, under the allegations made in the complaint.

The issues in the *Baird* case were in many respects similar to those raised here. The complaint before the Interstate Commerce Commission virtually charged that the defendant railroad companies were in a pool, and that they favored, in making

rates, certain coal companies which they owned and controlled. The officials of the railroad companies were also officials of the coal companies, as appears from the passages quoted from the opinion. The court held that the manner of conducting the business of these railroad companies, and especially their business relations with the coal companies owned and controlled by them, were material and relevant matters to be inquired into, and that the production of contracts and the giving of testimony divulging the facts in that regard would be compelled. Can there be the slightest doubt that, if these railroad companies had done business through a central dummy corporation, the court would have declared the manner of conducting the business of that corporation material and relevant to the issues, and required testimony to be given and documents to be produced in relation thereto? On the view advanced by the court in that case, it seems clear that the record-book of such a corporation as the General Paper Company is admissible to prove the allegations of a combination or conspiracy among the parties organizing it.

The refusals on the part of the witness Alexander to testify from the record, which he produced, or to permit an inspection thereof, were, we apprehend, based upon a total misconception of the duties

and responsibilities of a witness. Mr. Alexander is not a party to this cause. He was summoned merely as a witness, and directed to produce books and documents in his possession and under his control, which were deemed necessary and material to a full and complete inquiry into the facts through him as a witness. His duty was simply to tell the truth, regardless of whose interest it might affect. It could make no possible difference to him that the testimony which he was called upon to give might ultimately prove immaterial to the issues between the parties. He could refuse to testify only upon the ground of some claim of privilege purely personal to himself. Unless his claim in that regard (which we shall hereafter examine) is well founded, he stands before the court utterly without excuse for his refusal to testify. The duty to give testimony is a duty to the state, and not to the parties.

Wigmore on Evidence, §§ 2195 and 2210.

The same learned author says (section 2196):

“The claim of privilege can be made solely by the witness himself; the privilege (as the common phrase runs) is purely personal to himself. Whether he chooses to fulfill his duty without objection, or whether he prefers to exercise the exemption which the law con-

cedes to him, is a matter resting entirely between himself and the state (or the court as its representative). The party against whom the testimony is brought has no right to claim or to urge the exemption on his own behalf."

Brown v. Walker, 161 U. S. 597, and cases noted;

Morgan v. Halberstadt, 60 Fed. 592;

Wertheim v. Cont. Ry. & Trust Co., 21 Blatchford, 246;

New York Life Ins. Co. v. People, 195 Ill. 430;

U. S. Express Co. v. Henderson, 69 Iowa, 40;

Gibbons v. Co., 5 Price, 491.

This witness has subjected himself throughout the examination, entirely to the control of the parties against whom his testimony was sought, and unless his claim of personal privilege is sound, has violated his duty in order to protect the interests of those parties. There can be no distinction between his refusals to answer and his refusals to produce books and papers. The books and documents in a man's possession are as much subject to the calls of justice as are the faculties of speech and memory. In the words of Chief Justice Shaw:

"There seems to be no difference in principle between compelling a witness to produce a document in his possession under a *subpoena duces tecum* (in a case where the party calling the witness has a right to the use of such document), and compelling him to give testimony when the facts lie in his own knowledge."

Bull v. Loveland, 10 Pickering, 9.

The only interests which could in any way be affected by the disclosure of the minutes of the meetings of the General Paper Company are the interests of these defendants in regard to the very subject matter of this litigation. The General Paper Company, under its articles, and as disclosed by the evidence thus far taken in the cause, had no business except that connected with this combination and conspiracy. It has never been a selling agent for any parties except the defendant manufacturing corporations. Its entire scope of operation is confined to the continuation and carrying out of the alleged combination and conspiracy. Under these circumstances, can it be said that the attempt to secure these minutes to be offered in evidence is prompted by idle curiosity? If so, then the same plea is open to any conspirator whose acts are being scrutinized in proceedings of this kind.

2. Reports of the Treasurer and the Manager of sales of the General Paper Company, and contracts for the sale of news print paper to publishers.

The witness Alexander was the Treasurer as well as Secretary of the General Paper Company. It appears from the testimony that he made reports as Treasurer, and that the reports were usually in his care and custody. (Transcript of Record, page 274.) When questioned with reference to the character of the reports and in a preliminary way with reference to their general contents, he refused to answer. (Pages 274, 275.) He even refused to state in the most general way what the report of the Treasurer dealt with so as to identify it. (Pages 274, 275.) He refused to state whether or not his reports show the total sales in value each year made by the General Paper Company. (Page 274.) All of these refusals were based simply upon the ground that the matters called for were immaterial. With regard to the preliminary question as to what the reports had reference to, counsel also made the objection that the reports were the best evidence. These matters are covered by the refusals numbered in the schedule 36, 37 and 63.

The witness Stuart was for a portion of the time since the organization of the General Paper Com-

pany the Manager of Sales, and since September, 1903, he has been Second Vice President of the General Paper Company in charge of the sales department, the Sales Manager and other salesmen being under his direction and control. This sales department had to do with the sale of all of the paper produced by the mill corporations, and covered by their contracts with the General Paper Company. It appears that the sales manager made reports at the annual meetings of the stockholders of the General Paper Company. (Page 263.) Whether a report was made by the sales manager to the board of directors does not appear, as the witness refused to answer a question calling for that fact. (Page 297.) He was asked whether the minutes of the directors or stockholders showed that a report was made each year by the sales manager. Under advice of counsel the witness (page 297) refused to answer this question, although he had previously (page 263) stated that the sales manager usually made a report at the annual meeting of the stockholders. Questions were afterwards put to him separately as to whether the annual meetings of the stockholders or of the directors showed any report by the sales agent, and he refused to answer. (Tr. of Rec. in Wis. cases, page 297.) The witness also refused to

answer similar questions with regard to the annual meetings of the boards of directors in 1900, 1901, 1902, 1903 and 1904. (Pages 297, 298.) These refusals to make any answers respecting the reports of the sales agent are numbered 70 to 76, inclusive, in the schedule.

The refusal to make any disclosure whatever concerning the reports of the treasurer and of the sales manager was followed by refusals to give any information concerning the sale of paper by the General Paper Company. Refusals 61 and 62 in the schedule of refusals by the witness Alexander refer to questions found on page 296 of the transcript, where the witness declined to state whether he knew the total value of the sales for each year made by the General Paper Company. He then refused to state whether his reports as treasurer, or whether any books in his possession, showed the total sales in value for each year, or whether said sales amounted in value to approximately ten million dollars. (Tr. of Rec. page 296.) The witness Stuart declined to testify at all as to the amount, in weight, value, or kind, of sales of paper made by the General Paper Company. (Stuart's Refusals 1 to 9, inclusive; Trans. of Record pages 361-363.)

The witnesses called in Minnesota also refused to give any information concerning the reports of the treasurer or of the sales manager. After admitting that they were present at the time the treasurer's reports were made, and that they had examined such reports, the witnesses declined to state whether the profits, gross and net earnings, or the total sum distributed as dividends, of the General Paper Company, were shown in the reports. They declined also to give any information respecting the contents of the reports of the sales agent, and one witness refused even to state whether he was ever present when the report was produced. (Tr. of Rec. in Minn. cases, page 145.)

Among the documents which the officers of the General Paper Company were directed by the subpoena to produce were the contracts made with publishers throughout certain states and territories for the sale of news print paper. The witness Alexander testified (Tr. of Rec. in Wis. cases, page 293) that he did not have the contracts in question, and, when asked in whose possession they were, he answered that they were usually available for the selling department and were customarily under the supervision of the sales manager. His testimony was apparently evasive for, when asked whether

they were under his control, he answered "No sir, not absolutely." (Page 293). He also testified as follows (page 294):

"Q. Well, I don't understand whether you have testified as to whether you are the custodian of such documents?

A. Well, technically, I might be considered the custodian, but usually they have been under the supervision of the general manager of sales.

Q. Could you get them any time you desired?

A. I would have to consult the counsel."

Counsel for the defendants, as he usually did when the question of books and papers was raised, stated that he had possession of the papers and that counsel for the Government might assume that they were present in court. When asked whether he would produce them for inspection, he answered "No." On the question of the possession or control of these contracts, the witness Stuart testified as follows (Tr. of Rec. in Wis. cases, pages 351, 352):

"Q. Have you the contracts that you have made in the name of the General Paper Company, selling news print paper to these publishers, that are in force at the present time?

A. No sir.

Q. Where are they?

A. They are in the office of Mr. Flanders,
I presume.

Q. Who gave them to him?

A. Mr Alexander, I presume.

Q. Are they in your charge?

A. No sir, I never keep them in my
charge.

Q. Who has charge of them?

A. They pass immediately to the account-
ing department.

Q. Is Mr. Alexander at the head of the
accounting department?

A. Mr. Alexander is at the head of the
accounting department, but some time in
their course they go to the order clerks.

Q. I want to know who is in general
charge of them?

Mr. Flanders: If you want to go all
over this thing again, you may do it.

Mr. Kellogg: Mr Alexander said he is
not in charge.

Mr. Flanders: I have already told you,
for the purposes of this case, you might as-
sume these contracts were here, and we de-
cline to produce them. Now, that is as square
as you can get it on the record."

The witness Alexander further refused (page 295) to answer the question as to whether the contracts with publishers were usually on a printed blank. After stating that they were usually in the same general form, he declined to say where that form of contract was procured, and whether it was not taken from a form used by the International Paper Company (page 295).

These refusals all relate to the manner of conducting the business of the General Paper Company. They indicate the persistent policy on the part of the witnesses as officers of the General Paper Company, of declining to make any disclosures whatever with regard to the manner in which the business was carried on. Many of the questions remaining unanswered are of the most general and preliminary character. The government was not even permitted to go ahead and lay its foundation for calling for the production of the reports of the Treasurer and of the Sales Manager. It must be clear that reports of such officers as these are important and material to any proper trial of the issues involved in the cause. They would necessarily disclose not only that the General Paper Company did sell certain products of all of the manufacturing corporations defendant, but how these products were sold, to whom they were sold,

through what territory they were sold, and upon what terms and conditions the sales were made. These defendants other than the General Paper Company declare in their answers that they are still competing with one another in the sale of their product. Whether or not they are so competing is one of the vital issues in this case. Is it not then of the highest importance for the Government to show just how their product is being sold? Every detail of the machinery for the disposition of that product becomes, in view of this contention, a material fact in the controversy. All of the conditions upon which and the prices at which sales were made have a bearing upon the question whether this alleged competitive state of trade exists. The forms of the contracts for the sale of various grades of paper are material; every element of uniformity, every indication of concerted action is significant. The manager of sales of the General Paper Company was but the agent appointed by these individual mills to dispose of their product. What he reported to his principals at the stockholders' and directors' meetings manifestly would throw light upon the relations among them and the true nature of the combination which they had made and were carrying out. The reports of the Treasurer would un-

doubtedly show the total receipts from sales, subscriptions to stock, expense of management, earnings and profits, and disbursements in dividends. Are not all of these material things to consider in this case? For example, is it not material for the Government to show that each one of these manufacturing corporations defendant is a participant in the profits of the General Paper Company derived from the sale of the products of all of them together? Would not that fact bear directly upon the issue as to whether they have by the organization of the General Paper Company suppressed competition as among themselves? The allegation of the 4th paragraph of the Government's petition is that these manufacturing defendants entered into an agreement, combination and conspiracy with each other to restrain the trade and commerce among the several states, and to control, regulate and monopolize said trade and commerce. The third paragraph of the petition states that these defendants comprise substantially all of the manufacturers of paper within the territory where they operate. This latter allegation is denied by the defendants in their answer. In view of this issue, is it not material to show the total sales in value and in weight made by the General Paper Company, in

order that such totals may enable the court which has to pass upon these questions finally, to determine whether or not these defendants do comprise substantially all the manufacturers of paper in the territory in question, and whether or not they have attempted to monopolize trade and commerce in this commodity? These reports of the sales manager will be material on the further ground that according to the contention of the Government, they would show a pooling of the product of the various mills. The Government is attempting to show, among other things, as is apparent from the questions addressed to the witness Harmon, that as to certain grades of paper handled through the General Paper Company, a flat or arbitrary price is fixed at which that company credits the mills, and that the amount realized over and above that price, after deducting commissions and expenses of management is distributed among the mills in proportion to their output. Such an agreement, if it exists, would be the most convincing possible evidence of the combination and conspiracy alleged in the petition, and the Government should be entitled to show it in practically the only way in which it can be shown. In addition to this, reports of the sales manager have, of course, a direct bearing upon the question of the

control of the General Paper Company over the prices and terms of sale.

Practically all that has been said in connection with the materiality of the record book of the General Paper Company is applicable to the question now under consideration. We reiterate our conviction that every act of the General Paper Company as the form and entity which this combination and conspiracy assumed, is a fit subject for investigation under the issues that have been framed. All of its acts were done by the administrative officers of the selling company at the instance of the duly authorized representatives of the manufacturing corporations sitting upon its board of directors. They are the acts of the conspirators in continuation of and in furtherance of the objects of the conspiracy itself. It is an elementary principle of evidence that where two or more persons are associated together for some illegal purpose the acts or declarations of any one or more of them in reference to the common object are admissible against them all.

1 Greenleaf on Evidence, Sec. 111;

2 Wigmore on Evidence, Sec. 1079;

American Fur Co. v. United States, 2 Peters,
358; 8 Curtis, 138;

Clune v. United States, 159 U. S. 593;

- Wiborg v. United States*, 163 U. S. 656;
Lincoln v. Claflin, 7 Wallace, 138;
Conn. Mutual Life Ins. Co. v. Hillmon, 188
 U. S. 219;
United States v. Newton, 48 Fed. 218;
United States v. Gooding, 7 Curtis, 286; 12
 Wheaton, 460;
Nudd v. Burrows, 91 U. S. 427;
United States v. McKee, 26 Fed. Cases, No.
 15685;
State v. Winner, 17 Kansas, 305;
State v. Thompson, 69 Conn. 720; 38 Atl. Rep.
 869;
Hunter v. State, 112 Ala. 77; 21 So. Rep.
 65;
Lee v. Lamphrey, 43 N. H. 1;
Apthorp v. Comstock, 2 Paige's Chancery,
 481;
Jackson v. Summerville, 13 Pa. St. 359;
Burns & Stevens v. McCabe, 72 Pa. St. 309;
Confer et al. v. McNeal, 74 Pa. St. 112.

The acts sought to be shown through the officers
 of the General Paper Company are the acts not mere-
 ly of one of the conspirators, but of all of them act-
 ing jointly in reference to the common object. On
 every possible view of the principles and authorities
 the acts must be material and admissible.

3. Evidence concerning meetings preliminary to the organization of the General Paper Company, and declarations made by witnesses during the formation of the combination and conspiracy.

Another group of refusals to answer has reference to the evidence of meetings preliminary to the organization of the General Paper Company and to the declarations of the witnesses on the subject of intention, pending the formation of the conspiracy, or during its continuance. The witnesses Alexander and Whiting flatly refused to testify on the subject of any preliminary proposition of making the Manufacturers Paper Company, of Chicago, Illinois, the sales agent for all or a portion of the manufacturing corporations defendant. The government was attempting to show that, shortly prior to the actual organization of the General Paper Company, the representatives of the manufacturing corporations defendant met and discussed the proposition of placing their product with the Manufacturers Paper Company for sale, and finally actually had a meeting with the representatives of the Manufacturers Paper Company at which meeting the whole subject was gone over. The Government also sought to elicit information concerning an arrange-

ment with the Manufacturers Paper Company, in or about the month of January, 1902. The witness Alexander refused to give any information on that subject. (Refusals 78 and 79; Trans. of Record in Wis. cases, page 298.)

The witness Alexander was questioned with reference to an alleged interview, given by him to a reporter of the "Paper Trade Journal" at Appleton, Wisconsin, on June 18, 1900, either during or just after the meeting of the board of directors on that date. He declined to answer any questions on the subject. (Refusals 26, 27 and 28; Tr. of Rec. in Wis. cases, pages 236-238.)

The witnesses called in Minnesota, who were officers of constituent companies and also directors in the General Paper Company, adopted the same position with reference to the preliminary negotiations for organizing the General Paper Company. The witness McNair, whose company did not join until 1902, refused to give any information whatever concerning facts leading up to the making of a contract by his company with the General Paper Company. (Trans. of Rec. in Minn. cases, pages 149-151.) The questions addressed to him in this particular were obviously designed to bring out the fact that the Northwest Paper Company was forced

to go into the combination by reason of threats made by the officials of the General Paper Company.

There cannot be the slightest doubt that the testimony relative to the meeting with the representatives of the Manufacturers Paper Company, and the proposition to make it the general selling agent, is evidence of the most material kind, tending to characterize the combination thereafter effected under the name of the General Paper Company. This meeting took place during a period of time when it is admitted by the witnesses Whiting and Alexander that the representatives of the defendant manufacturing corporations were holding conferences which led up to the organization of the General Paper Company. Any tentative plans that they may have had during that period, and any proposition that they may have made to the Manufacturers Paper Company to undertake the sale of their product, must constitute the best possible evidence of the intentions and purposes of the parties who organized the General Paper Company.

The law on this subject has long been established. We need only refer to the opinion of Mr. Justice Field in *Lincoln v. Claflin*, 7 Wal. 132.

We are aware of the general rule that ordinarily some *prima facie* evidence of the conspiracy

must be offered before the declarations of co-conspirators can be received in evidence. For reasons already adverted to, we believe that the conspiracy had been proved long before the questions concerning the declarations of the witnesses were put. Even if this were not so, the general rule is always relaxed where proof of the conspiracy depends upon a vast amount of circumstantial evidence, or a number of isolated and independent facts. In such cases it is in the sound discretion of the court to allow the declarations in advance of proof of the conspiracy.

1 Greenleaf on Evidence, 111;

State v. Thompson, 69 Conn. 720; 38 Atl. 870.

State v. Winner, 17 Kansas, 305.

In cases of conspiracy, the admissions of the accused conspirators are always a fruitful source of evidence. Only in exceptional cases is the conspiracy shown by direct and positive evidence. The proof is usually indirect and circumstantial, and courts are bound to rely in large measure upon the admissions made by the conspirators either during or after the accomplishment of the common purpose.

State v. Thompson, 69 Conn. 720; 38 Atl. 870.

Clune v. United States, 159 U. S. 592.

United States v. Hutchins, 26 Fed. Cases No. 15430.

United States v. Hamilton, 26 Fed. Cases No. 15288.

The Mussel Slough Case, 5 Fed. 680.

United States v. Babcock, 3 Dillon, 581.

United States v. Lancaster, 26 Fed. Cases No. 15557.

Davis v. United States, 107 Federal, 753. (C. A. 6th Cir.)

The questions addressed to the witness Whiting with reference to the preliminary agreement or understanding about the organization of the selling company, the proportions in which the stock was to be divided, etc., relate unquestionably to the formation of the combination or conspiracy. They call for direct testimony on the subject. So also, the questions concerning the negotiations with representatives of the defendants Itasca Paper Company and Northwest Paper Company, are material for the same reason. These companies came into the combination after its inception, and it would seem that the circumstances surrounding their joining must be admissible on any theory. The Petoskey Fibre Paper Company is a defendant which has been dropped from the board of directors of the General Paper Company. Whether or not it was so dropped, because it had declined to renew its contract with the Gen-

eral Paper Company, has a bearing upon the general plan of organization of this combination. That any negotiation had between the General Paper Company and the International Paper Company, with regard to the latter keeping out of the western territory, are admissible, should need no argument. Any attempt on the part of the General Paper Company and its officers to make any such arrangement must necessarily characterize the combination and throw light upon the purposes for which it was formed.

4. Refusals to answer on the subject of the manufacture and sale of butchers' fibre.

It appears that butcher's fibre is a grade of wrapping paper manufactured by the defendant manufacturing corporations, and covered by the contracts made by them with the General Paper Company. Since its organization the General Paper Company has therefore had the exclusive right to sell all the butcher's fibre manufactured by the defendants. Questions were addressed to the witnesses Alexander and Whiting, designed to bring out the fact that butcher's fibre is less profitable to manufacture than the other grades of paper covered by

the contracts, and that, in order to induce some of the manufacturing defendants to make it, and thus supply the market, an agreement or pool was formed among the fibre mills, whereby the mills undertaking to manufacture this grade of paper were compensated by the others. The questions were further directed to showing that the contributions made by mills not manufacturing butcher's fibre were made on the basis of information supplied by or through the General Paper Company. In other words, it was sought to show that the defendants had carried out the purpose of eliminating competition among themselves to the extent of pooling their losses as well as their profits. The witnesses emphatically declined to answer any questions on this subject. (Whiting's refusals 16 to 18, inc.; Alexander's refusals 45 to 56, inc.)

The officers of the constituent manufacturing companies took the same stand as the officers of the General Paper Company, and declined to answer even the most general preliminary questions relating to the manufacture and sale of butcher's fibre. (Tr. of Rec. in Minn. cases, pages 114, 115, 116, 138 and 139.)

The only ground of refusal given was that the evidence was incompetent and immaterial.

The materiality of this evidence is so manifest that we are almost at a loss to know how to argue the question. We can conceive of no fact, or series of facts, which would go so far to characterize this combination, and to determine the status of the various defendants in their relations to one another, as the facts sought to be adduced on this subject of the manufacture of butcher's fibre. It was a grade of paper of which the General Paper Company had the exclusive sale, under the contracts in evidence. The fact that it was less profitable to make than other grades led to the formation of the pool, in order that the demand for it might be met. This pool, if it existed, is conclusive proof of the fact that competition among the defendants has been eliminated, at least as to this grade of paper. *Smiley v. Kansas*, 196 U. S. 447.

5. Refusals to answer questions relating to the making of prices, the equalization thereof, and the division of profits, as between the General Paper Company and the manufacturing corporations.

Most of the questions propounded to the witness Harmon, and many of those asked of the witnesses Nelson, Bossard and McNair, were designed to elicit information on the subject of the precise arrangement between the General Paper Company and the

constituent companies, for the disposal of the product of the latter. Counsel for the government repeatedly asked, with reference to both hanging paper and news print paper, whether there was not a stated or fixed price for these grades of paper, with which the manufacturing corporation was credited in the first instance by the General Paper Company, and whether the mill did not thereafter receive a proportion of the amount realized by the General Paper Company from the sale of the paper over and above that fixed or stated price after deducting commissions and expenses of management. All questions on this subject remained unanswered.

That the information called for was competent and material to the issues seems almost too clear for argument. If, as the questions assume, paper manufactured by the mills was turned over to the General Paper Company at a certain flat price, and the amounts realized over and above that price through the sale of the product, after deducting commissions and expenses, was proportionately divided among the mills manufacturing the various grades of paper respectively, what better evidence could be required to establish the averments of the original petition filed by the Government in the cause? Such an arrangement among the mills would

amount *per se* to a deliberate agreement for the elimination of competition among themselves, and hence to a combination and conspiracy in restraint of trade, as charged.

In this connection may also be considered the refusals on the part of the witness McNair (Tr. of Rec. in Minn. cases, page 140) to give information concerning the basis of distribution, or apportionment, among the various manufacturing companies, of contracts made by the General Paper Company with publishers for the sale of news print paper. Any plan for the distribution or apportionment of such contracts would, for the reasons above given, clearly amount to an agreement to eliminate competition.

6. Refusals to answer on the subject of Dividends of the General Paper Company.

The witnesses persistently refused (Alexander's refusals 66 to 69, inc.; Stuart's refusals 10 and 11; Nelson's refusals 26 and 27; Bossard's refusals 13 and 14; and McNair's refusals 28 and 29) to give information on the subject of dividends of the General Paper Company.

As already suggested, the questions whether

dividends were paid by the General Paper Company, and, if so, how, when and in what proportions and amounts, are material for several reasons. In the first place, this subject is one intimately related to the organization of the General Paper Company and the manner and proportions in which the stock is, and has been, held. It therefore bears upon the very nature of the combination and conspiracy. Again, the declaration of dividends is only another fact showing how the business of the combination was carried on, and is admissible in the same way as any other act of the conspirators done by and through the medium of the General Paper Company. Finally, it is unquestionably competent for the Government to go into this matter of dividends, for the purpose of showing that each one of these manufacturing corporations defendant is participating in the profits derived from the sale of the product of all of them.

• *Smiley v. Kansas*, 196 U. S. 447.

7. Refusals to produce the books of the constituent companies, or to give information concerning their contents.

The witnesses Nelson, Bossard and McNair were officers, respectively, of the defendants, Henne-

pin Paper Company, Itasca Paper Company and Northwest Paper Company. They were subpoenaed to produce, among other things, the books of their respective companies showing the amounts, kinds and grades of paper manufactured, and sold through the General Paper Company; the prices, amounts, or credits, received from the General Paper Company for paper sold; and the amounts and proportions of the earnings or profits of the General Paper Company received by their respective companies, either in the form of dividends or otherwise.

The witnesses not only declined to produce the books, but refused to answer preliminary questions designed to show, in a general way, whether or not the books contained information upon the subjects called for.

(See schedule of refusals on this subject by Nelson, Bossard and McNair.)

The call for the books and their contents was limited to the purpose of disclosing such transactions between the constituent manufacturing companies and the General Paper Company, as would obviously throw light upon the existence and character of the alleged combination and conspiracy. Practically all that has been urged above with reference to the competency and materiality of the

record-book of the General Paper Company, applies to the situation with reference to these books of the constituent companies. Surely, the entries made in the books of the several conspirators, pursuant to and in the regular course of business, transacted while carrying out the conspiracy, must be competent evidence in a case of this kind. These books merely show, from the point of view of the manufacturing company, the same facts which would appear if the books and records of the General Paper Company are made available in the case. One set of books must supplement and corroborate the other. Both of them are competent and material upon the same grounds.

8. Miscellaneous refusals.

Refusals 40 and 41 in the schedule referring to Alexander's testimony relate to questions calling for the number and dates of directors' meetings held in the year 1900. (Tr. of Rec. in Wis. cases, page 288.)

Refusals No. 77 refers to the witness Alexander's refusal to answer an inquiry as to whether there was a meeting of the board of directors in January, 1902 (page 298).

The same witness also refused to answer the following question (Tr. of Rec. in Wis. cases, page 295):

“Q. Can you in a general way state what the principal product of the defendant mills is, whether it is news print paper or other classes?”

The witness Whiting (Tr. of Rec. in Wis. cases, page 310) declined to state whether, before the final organization of the General Paper Company, the plan of forming a selling company to handle the products of the mills represented by certain gentlemen named by him, had been finally agreed upon.

Along the same line, this witness declined (Tr. of Rec. in Wis. cases, pages 315 and 316) to state whether, prior to the time of the actual subscription to the stock of the General Paper Company, any understanding was reached as to the amount of stock that should be given to each of the subscribers; or whether he had any idea, prior to that time, of the amount of stock he was to receive for his mill.

On page 336 of the transcript of record (Refusal No. 21), the witness Whiting refused to answer the following question:

“Q. Do you mean to say, Mr. Whiting, that you, as one of the principal men, caused

the General Paper Company to be organized to handle more than ten million dollars of products per year, and that you don't recollect the plan on which it was organized?"

Counsel for the defendants instructed the witness not to answer this question, giving the usual grounds and also the further ground that the question was improper, discourteous, was an affront to the witness and probably intended as such.

He also refused (Refusal 22, page 336) to answer the following question:

"Q. You have no recollection of an understanding between you gentlemen as to the basis of a division of the stock at all?"

Whiting's refusals 6 to 15 (Tr. of Rec. in Wis. cases, pages 327 to 331, inc.) relate to questions calling for the substance of negotiations between the witness and representatives of the defendants Itasca Paper Company and Northwest Paper Company, to induce those companies to come into the General Paper Company.

Refusals 19 and 20 (Tr. of Rec. in Wis. cases, page 335) refer to questions calling for information concerning the renewal of the contract of the General Paper Company with the defendant Petoskey Fibre Paper Company. The witness declined to

state whether the subject was discussed at the directors' meeting held in December, 1904.

Refusal No. 26 (Tr. of Rec. in Wis. cases, page 345) relates to the following question:

"Q. After the organization of the General Paper Company, did you have any conversation with any of the officers of the International Paper Company about keeping out of this territory west of Chicago?"

Many of the questions above referred to were of a preliminary character, and should certainly have been answered as such. The refusals to answer them clearly indicate the disposition on the part of these witnesses to suppress all the information they can, and further illustrate the determination of the counsel for the General Paper Company to assume the prerogatives of a chancellor at these hearings before the examiner.

II.

THESE WITNESSES CANNOT CLAIM THE PRIVILEGE OF SILENCE EITHER UNDER THE GENERAL PRINCIPLES OF COMMON LAW AND EQUITY JURISPRUDENCE AND PROCEDURE, OR UNDER THE FOURTH AND FIFTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

(A) *Under the general principles of common-law and equity jurisprudence and procedure.*

Among the defences urged in the returns to the orders to show cause, is that the "established rule of common-law, as well as of equity, jurisprudence" protects the witnesses against the disclosures sought to be enforced.

It will of course be conceded that in the case of non-judicial officers, or bodies, such as the Interstate Commerce Commission, committees of Congress, the Secretary of the Department of Commerce and Labor, or any other administrative or executive officer or board, the power in question cannot exist except by virtue of a statute specifically conferring it.

In this case, however, the United States Circuit Court stands clothed with all the powers inherent in

a court of equity. A very brief reference to the history of the compulsory production of evidence, both at law and in equity, will demonstrate that the power of the court in this respect is ample.

It is true that under the ancient practice in actions at common-law a party might not compel his opponent to furnish evidence as a witness. His only remedy was by way of a bill of discovery in equity to compel his opponent to disclose facts and documentary evidence material to his case.

Wigmore on Evidence §§ 2217, 2218.

This limitation, however, never existed in equity, and parties could there be freely compelled, either before or after issue joined, to disclose evidence and documents material to the issues. We are of course stating this proposition with the reservation, which will be hereafter discussed, that the testimony or documents would not tend to criminate the party, or subject him to penalties or forfeitures.

Greeleaf on Ev. (15th ed.), Vol. 1, § 361.

Daniels on Ch. Prac. (5th ed.), Vol. 1, p. 885,
note 6.

Adams on Equity (7th ed.), p. xxxvi.

Wigmore on Ev. §§ 2218, 2219, pages 3012,
3014-15-16.

The result of the decisions both in England and in this country has been an emphatic declaration of the principle that a party will be compelled to make a disclosure of all facts within his knowledge, or books and documents in his possession, which tend either to establish his opponent's case or to refute the position which he himself takes.

Bustros v. White, Eng. Law Rep. Q. B. Div. 423.

Carver v. Pinto Leite, L. R. 7th Ch. App., p. 90.

Moore v. Craven, L. Rep. 7th Ch. App. cases, p. 95.

Attorney General v. Gaskill, L. R. 20, Ch. Div. p. 520.

Atty. Gen. v. Mayor & Corp. of Newcastle-Upon-Tyne, 1897, 2 Q. B. Div. 384.

Atty. Gen. v. Emerson and another, Law Rep. 10 Q. B. Div. 191.

Arnold v. Pawtuzel Valley Water Co., 18 R. I. 189; 19 L. R. A. 602; 26 Atl. 55.

The power of a court of equity to compel a party to give evidence and produce books and papers material to the issue, cannot at this day be controverted. Indeed, the fundamental characteristic of equity procedure has always been the power and disposi-

tion to act directly upon the parties before the court, rather than upon subject-matter in controversy. The orders and decree of the chancellor were constantly resorted to by parties in actions at law to compel the very thing which the government seeks to accomplish in this proceeding. Modern legislation has made the bill of discovery an unnecessary adjunct even in actions at law. Material evidence may now be required of a party in such actions, without resorting to this cumbersome proceeding.

1 Pomeroy on Eq. Jurisp. (2d ed.), § 193.

Wigmore on Ev., § 2219.

14 and 15 Victoria, Ch. 99, § 6.

Rev. Stat. of Wisconsin 1898, § 4183, as amended by Ch. 244, Laws of 1901.

In 1864 Congress passed the following law, appearing as section 858 of the Revised Statutes:

“In the courts of the United States, no witness shall be excluded in any action on account of color, or in any civil action because he is a party to, or interested in, the issue tried. * * * In all other respects, the laws of the state in which the court is held shall be the rules of the decisions as to the

competency of the witnesses, in the courts of United States, in trials at common law and in equity and admiralty."

The history of the legislation by which this most salutary reform in procedure was accomplished is fully stated in Wigmore on Evidence, §§2217, 2218 and 2219.

It may safely be said that nowhere in the English-speaking world to-day is a party privileged to refuse the disclosure of material evidence in his possession, either oral or written. The right never existed in equity, and in common-law actions it has been swept away by statute.

In the courts below it was contended also that in equity a privilege existed not to make any discovery which might result in any loss or disadvantage in the nature of a penalty or forfeiture. The argument was that, while the constitutional guaranties applied only in criminal cases, the so-called privilege which existed in equity was not limited to that class of cases, and was therefore virtually an extension of the principle found in the Fifth Amendment.

As this contention cannot well be taken up without discussing at the same time the scope and effect of the amendments, we have deemed it best to deal with it in the next subdivision of the brief.

(B) *The protection of the Fourth and Fifth Amendments cannot be invoked.*

As already noted, each of the appellants has made certain claims of privilege under the Fourth and Fifth Amendments to the Constitution. A brief review of these claims will conduce to an intelligent discussion of the subject.

The individual witnesses plead privileges as follows:

- (1) In behalf of the General Paper Company.
 - (a) That the giving of the evidence will subject the General Paper Company to penalties under the Act of Congress of July 2, 1890;
 - (b) That the evidence called for would expose the General Paper Company to forfeiture of its charter under the laws of the State of Wisconsin;
 - (c) That the evidence, if given, would subject the General Paper Company to prosecution for crime, or to penalty or forfeiture, or to something in the nature of a penalty or forfeiture.
- (2) In behalf of the witnesses themselves:

- (a) That the evidence, if given, would tend to convict them of violations of the Federal laws, contrary to the Fourth and Fifth Amendments;
- (b) That the evidence would tend to convict them of violations of the laws of their respective states;
- (c) That the evidence would result in subjecting them, as stockholders of the General Paper Company and of other defendant companies, to loss and detriment in the nature of a penalty or forfeiture.

The General Paper Company pleads privileges as follows:

- (1) That to compel its officers (the witnesses) to give the evidence called for would amount to requiring the corporation to be a witness against itself, contrary to the provisions of the Fifth Amendment, and, so far as the books and papers called for are concerned, would amount to an unreasonable search and seizure contrary to the provisions of the Fourth Amendment;

- (2) That the evidence called for would tend to subject it to forfeiture of its charter, and to other penalties under the laws of the State of Wisconsin.
- (3) That the evidence called for would tend to subject it to loss or damage in the nature of a penalty or forfeiture, by tending to disable it from carrying out its contracts with the other twenty-three defendant corporations for the sale of their product.

In the proceeding in Minnesota, the constituent companies of which the witnesses were officers and stockholders also filed answers raising the same issues. (Transcript of Record, Minn. cases, pages 83, 93, 103.)

Before proceeding to examine these claims in detail, we may dismiss without further consideration any claim which the witnesses have made based upon their alleged ownership of stock in the General Paper Company. They are confessedly not the owners of the stock held in their names. In each case the stock so held is the property of the manufacturing corporation defendant with which the record-holder happens to be connected. (Tr. of Rec. in Wis. cases, page 301.)

We shall consider the questions raised by the above claims of privilege under the following heads:

1. The order requiring the appellants to testify and to produce documentary evidence, being made in a suit pending to restrain them from the continuance of a combination and conspiracy in restraint of trade, under the Act of Congress, does not involve an unlawful search and seizure within the meaning of the Fourth Amendment.
2. The guaranty of the Fifth Amendment, that no person shall be compelled in a criminal case to be a witness against himself, is personal to the witness and does not protect corporations.
3. Any privilege which may exist is covered by the immunity statute (32 Stat. at Large, 904; Supp. U. S. Comp. Stat. 1901, p. 367), which is as broad as the constitutional protection. If the Fifth Amendment be held to extend to corporations, the immunity statute must be likewise extended.

1. *The order requiring the appellants to testify and to produce documentary evidence, being made in a suit pending to restrain them from the continuance of a combination and conspiracy in restraint of trade, under the Act of Congress, does not involve an unlawful search and seizure within the meaning of the Fourth Amendment.*

An elaborate discussion of the origin and development of the Fourth Amendment is no longer necessary. It is sufficient to say that in England the incorporation of the principle into the unwritten constitution followed from those abuses of executive authority whereby agents of the Crown were sent into the houses of private citizens to make general searches for evidence of political offenses committed or designed. At the time of the Revolution, these abusive practices were fresh in the minds of the colonists, who drew their inspiration from those principles of English law which had been established for the protection of the citizen against just such oppression. This form of tyranny had been indelibly impressed upon the minds of the inhabitants of this country by the practice of issuing writs of assistance to revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods.

Boyd v. United States, 116 U. S. 625;
Cooley on Constitutional Limitations, 6th Ed.
pg. 364.

It requires but a very brief reference to the origin and growth of this principle, finally adopted as an amendment to our constitution, to show that it has no proper application to the present situation. The principle never was intended, and never has been applied, to prevent the production of books and documents material and relevant to a cause, unless such production would tend to criminate the witness. It would seem that it has always been the practice for courts of equity to compel a party to testify and to produce books and documents material to the issues in a pending cause. The practice was well established at the time of the adoption of the constitution; and no principle is better established than that proceedings well known to the courts and in general use at the time the constitution was adopted, will not be considered to fall within the inhibitions therein contained.

Murray's Lessee, et al., v. Hoboken Land & Improvement Co., 18 How. 272.

To issue a general warrant to search one's house and papers without the justification of a pending cause thereby to be subserved, is one thing; to issue a *subpoena duces tecum* to compel the production

of material documentary evidence to substantiate an issue in a pending suit, is quite a different thing. The practice of issuing subpoenas is fully as ancient as that of issuing search warrants. The latter were regarded as grievances; the former never were. The constitutional provision is that "no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." It seems safe to say that the Fourth Amendment was intended simply to prevent general searches and seizures, and that it is an unwarranted extension of the principle to invoke it to prevent the production of books and documents particularly designated, in the possession of the opposite party to a suit. The only decision which we have been able to find applying the amendment to the case of a subpoena is the decision of Judge Wallace in the case of *In Re Hale*, United States Circuit Court, Southern District of New York, not reported. The case is now pending in this court for review. Judge Wallace there said that a general subpoena to produce before a grand jury all of the books, papers, letters and contracts of a certain corporation extending over a term of years, was an unlawful search and seizure within the meaning of the Fourth Amendment. The distinction between that situation

and the one here is obvious. In this case we not only have a pending suit with issues framed, but every book and document called for is described with particularity and its materiality pointed out. In most cases the books and papers were actually produced in court. Attention is directed to the following language of Judge Wallace:

“If the petitioner had been ordered to produce a single document or numerous documents in his possession, which were adequately described to enable him to find them, for use as evidence in a pending action, civil or criminal, it seems plain that the order would have been unobjectionable and such as the courts are daily making. Such was the case of *Interstate Commerce Commission v. Baird*, 194 U. S. 25, where the observation was made by the court upon which the Government relies.”

The case of *Boyd v. United States* was a proceeding under the revenue laws, on information filed by the District Attorney for the seizure and forfeiture of thirty-five cases of plate glass seized by the collector. The statute provided that any owner, importer or consignee who should, with intent to defraud the revenue, attempt to make an entry of imported merchandise by means of fraudulent in-

voices, etc., or who should be guilty of any wilful act or omission whereby by the United States should be deprived of its lawful duties or any portion thereof, should

“for each offense, be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both, and, in addition to such fine, such merchandise shall be forfeited.”

The statute also required the owner, on motion of the district attorney,

“to produce in court his private books, invoices, and papers, or else the allegations of the attorney to be deemed as confessed.”

It was held that the statute was unconstitutional, as applied to suits for the forfeiture of goods, being repugnant to the Fourth and Fifth Amendments. The gist of the case was that the provision for taking the statements of the district attorney's affidavit as true, in the case of non-production, was tantamount to compelling the production of all books and papers which might tend to criminate the owner and subject his property to forfeiture in a proceeding criminal in its nature. The court considered the cases in

which seizure of a man's goods under writs and process was permitted, and distinguished them as follows:

“And in the case of goods seized on attachment or execution, the creditor is entitled to their seizure in satisfaction of his debt; and the examination of a defendant under oath to obtain a discovery of concealed property or credits is a proceeding merely civil to effect the ends of justice, **and is no more than what the court of chancery would direct on a bill for discovery.* Whereas, by the proceeding now under consideration, the court attempts to extort from the party his private books and papers, to make him liable for a penalty or to forfeit his property.” (Page 624 of opinion.)

So far as the production of evidence against one's self is concerned, it is difficult to see wherein the Fourth Amendment adds anything to the protection of a witness which is not fully covered by the Fifth Amendment; for, manifestly, there can be no distinction in principle between the giving of oral testimony, and the production of books and papers which might tend to incriminate. Logically consid-

*Italics are ours.

ered, it seems to us that the concurring opinion of Mr. Justice Miller and Chief Justice Waite states the true theory of the application of these amendments. However this may be, it may be conceded for the purposes of our argument that the seizure of a person's private papers, to be used as evidence against him in a criminal case, might not only fall within the inhibition of the Fifth Amendment, but also be an unreasonable search and seizure within the Fourth Amendment. What the court held in the *Boyd* case was virtually that the district attorney, under the provision for taking his statements as true in case of non-production, was in a position to compel production of papers generally, and that the owner of the goods was therefore bound to produce his papers or suffer a forfeiture of his goods. It was evident that the proceeding had all the objections of a general warrant to search one's papers and premises. The law providing that the affidavit of the district attorney as to what all of a man's books, papers and invoices would tend to show, should be taken as true unless the papers were produced, has in effect all of the vicious elements of a general warrant to seize and search all of the papers. On this point the court said:

"But, in regard to the Fourth Amendment,

it is contended that, whatever might have been alleged against the constitutionality of the acts of 1863 and 1867, that of 1874, under which the order in the present case was made, is free from constitutional objection, because it does not authorize the search and seizure of books and papers, but only requires the defendant or claimant to produce them. That is so; but it declares that if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is tantamount to compelling their production; for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of. It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers, are wanting, and to this extent the proceeding under the act of 1874 is a mitigation of that which was authorized by the former acts; but it accomplishes the substantial object of those acts in forcing from a party evidence against himself."

(Page 621 of Opinion.)

As Judge Wallace said in the *Hale* case, it still

remains true that neither the Fourth nor the Fifth Amendment would be violated by the production of books and papers material to the issues of a cause regularly pending in a court of justice, where the party is fully protected against prosecution for crime or against the enforcement of penalties or forfeitures on account of any matter in relation to which he may thus testify or produce evidence. Granting that a general *subpoena duces tecum* to produce all of a person's papers to be examined by the grand jury or prosecuting attorney for the purpose of finding, if possible, some evidences of crime, where the person may be prosecuted and subjected to punishment if found guilty, comes squarely within the inhibition of the Fourth and Fifth Amendments; yet the principle can have no application where particular books and papers, sufficiently described to enable the witness to identify and separate them from the general mass of papers, and to enable the court to see their probable materiality, are required to be produced in a pending suit, and the witness is protected by statute from any prosecution on account of the matters involved. The one, although disguised under a different form, to be sure, from a general search warrant, which has received the condemnation of law, is in reality an unlawful search and

seizure of papers for the purpose of finding evidence to convict of a crime; the other is a well established judicial proceeding, carried out with a view to the full protection of the witness, to enable the court to arrive at a conclusion on the facts at issue. Modern jurisprudence has always condemned the one and approved the other. One protects the sanctity of the home and the personal liberty of the citizen; the other enables the Government to punish crime and in proper proceedings to prevent the violation of law.

The case of *Adams v. New York*, 192 U. S. 585, has an important bearing upon the meaning of the Fourth and Fifth Amendments. There, papers were seized by virtue of an illegal search warrant in the course of a search for gambling devices. The court held that the evidence thus procured might be admitted on the trial of the person accused of the crime of having in his possession gambling paraphernalia. Clearly, if the Fourth Amendment was intended to prohibit a court from compelling a defendant to furnish evidence in any cause simply for the reason that the papers are private, the evidence in the *Adams* case would not have been admitted, for if the compulsory production of material evidence derived from

the defendant's private books and papers is regarded as an unreasonable search and seizure, then the evidence there considered would have been inadmissible within the rule laid down in the *Boyd* case. The decision in *Adams v. New York* is a recognition of the principle that the amendment was never conceived to have any such force. The court said (page 598):

"We think they were never intended to have that effect, but are rather designed to protect against compulsory testimony from a defendant against himself in a criminal trial, and to punish wrongful invasion of the home of the citizen, or the unwarranted seizure of his papers and property, and to render invalid legislation or judicial procedure having such effect. * * *

Evidence obtained by means of a search warrant is not inadmissible, either upon the ground that it is in the nature of admissions made under duress or that it is evidence which the defendant has been compelled to furnish against himself, or on the ground that the evidence has been unfairly or illegally obtained, even if it appears that such warrant was illegally issued."

In *Interstate Commerce Commission v. Brimson*, *supra*, this court held that Congress might create an administrative body, and authorize it to summon witnesses, and require the production of books, documents and papers relating to the subject-matter. The special authorization in regard to calling witnesses and the production of books and papers was obviously necessary, because the Commission was not a court and could have no inherent powers as a court of equity. The act of Congress further conferred upon the United States courts jurisdiction, at the suit of the Commission, to compel witnesses to appear before the Commission and to testify and produce documentary evidence. The facts in the case were these: A complaint had been made to the Commission that the Illinois Steel Company, a manufacturing corporation, had caused to be incorporated certain railroad companies owning certain switching lines, and that the Illinois Steel Company operated them in connection with other railroads engaged in interstate commerce, for the purpose of evading the law and obtaining illegal, unjust and unreasonable rates on its products. Certain officers of the railway companies and the Steel Company were subpoenaed by *subpoenas duces tecum*, addressed to them as officers of the said companies respectively, requiring

them to produce the stock-books of their respective companies. They refused to answer any questions as to the ownership of the stock, or to produce the books. The Commission made an application to the court to compel the giving of their testimony and the production of the books. The court dismissed the bill. In this court it was contended that the twelfth section of the Interstate Commerce Act was in violation of the fundamental guaranties of personal rights recognized by the Constitution as inhering in the freedom of the citizen. It will be noted that this is the provision authorizing the Commission to investigate the business of common carriers engaged in interstate commerce, and authorizing the court to enforce the attendance of witnesses and the production of documentary evidence. The court held that this privilege had not been claimed before the court below, and said that, had it been raised and determined in favor of the witnesses, the proceedings could have been dismissed upon the merits. The court however, then proceeded to state that since the decision of the case in the court below, Congress had amended the immunity statute considered in *Counselman v. Hitchcock*, by an act approved February 11th, 1893, being the immunity statute now in existence, and which was considered in *Brown v. Walker*, and

Interstate Commerce Commission v. Baird, plainly intimating that under that act the witness would have been compelled to produce books. If this was an unlawful search and seizure, no act of Congress requiring the production would have made it legal. It was entirely unnecessary for the witness to claim his personal privilege under the Fourth Amendment; the proceedings would have been void and the claim could have been made in any court.

Can it be possible that the court has authority to compel the appearance of a witness before the Interstate Commerce Commission, or before the Secretary of Commerce and Labor and the production of his books and documents as evidence in an investigation into a conspiracy in restraint of trade, and yet has no inherent power to compel the same production before an examiner taking testimony in a cause after it has been brought by the government to restrain a violation of the Sherman Law? Are courts of equity potent to aid executive and administrative bodies, and impotent to enforce the act of Congress in direct judicial proceedings brought by the Government to restrain parties from violating it? The truth is that all of these statutes, including those removing the disabilities of parties as witnesses, and the laws of the states abolishing the cumbersome practice of

bills of discovery, are evidence of a progressive and enlightened policy in the administration of justice.

Interstate Commerce Commission v. Baird, supra, is another very important case. There, the court required the officers of the defendant railroad companies to produce certain contracts between their companies and various coal companies in which the railroads were largely interested. The case in its origin was a proceeding before the Interstate Commerce Commission upon a specific complaint charging the railroad companies defendant with unreasonable discriminations in carrying coal. Among the contentions made in behalf of the Commission was the one that the Commission's broad powers of investigation on its own motion were sufficient to cover the case, but the court held that the proceeding before it was not an investigation conducted by the Commission under its general powers under section twelve of the Interstate Commerce Act, but was a proceeding under a specific complaint. The court said (Pages 40 and 41):

“But in the present case, whatever may be the right of the commission to carry on an investigation under the general powers conferred by section 12, this proceeding was

under the complaint filed, and we will examine the testimony offered with a view to its competency under the allegations made by the complainant."

For the purposes of this argument, nevertheless, we may waive any such question and assume that the statute requiring the attendance of witnesses and the production of documents applied with all its force to this trial upon a specific complaint in the same manner that it would apply to general investigations by the Commission upon its own motion.

The defendants contended not only that the papers called for were immaterial, but that the evidence, if adduced, would tend to subject them to forfeiture of estate in violation of the Fifth Amendment, and to unreasonable searches and seizures in violation of the Fourth Amendment. The argument advanced and the answer thereto appear in the following extract from the opinion (page 44 *et seq.*):

"It is contended in the answers filed in the Circuit Court that to require the production of these contracts would be to compel the witnesses to furnish evidence against themselves which might result in forfeiture of estate in violation of the Fifth Amendment to

the constitution; would subject the parties to unreasonable searches and seizures of their papers contrary to the Fourth Amendment, and would require them to produce papers pertaining wholly to intra affairs in violation of the reserved rights of the people of the states, and beyond the power of the commission, whose duties are limited to investigations pertaining to interstate commerce.

“At the hearing the constitutional objections do not seem to have been relied upon; those argued pertained to the relevancy of the proof and the rights of persons not before the court to be protected from the publication of their private contracts. As to the constitutional objection based upon the Fifth Amendment, the act as amended February 11, 1893, expressly extends immunity from prosecution or forfeiture of estate because of testimony given in pursuance of the requirements of the law. The full consideration of the subject and the decision of this court in *Brown v. Walker*, 161 U. S. 591, renders further consideration of this objection unnecessary.

“The origin and interpretation of the Fourth Amendment to the constitution, securing immunity from unreasonable searches and seizures, was fully discussed by Mr. Justice Bradley in the leading case of *Boyd v. United States*, 116 U. S. 616. In that opinion the learned Justice points out the analogy between the Fourth and Fifth Amendments, and the object of both to protect a citizen from compulsory testimony against himself, which may result in his punishment, or the forfeiture of his estate, or the seizure of his papers by force or their compulsory production by process for the like purpose. In the course of the opinion it is said: ‘Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man’s own testimony, or of his private papers, to be used as evidence to convict himself or to forfeit his goods is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other.’ And see *Adams v. People of State of New York*, 192 U. S. 585, decided at this term.

“As we have seen, the statute protects the

witness from such use of the testimony given as will result in his punishment for crime or for forfeiture of his estate. **Testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure.* Indeed, the parties seem to have made little objection to the inspection of the papers; the contest was over their relevancy as testimony. Nor can we see force in the suggestion that these contracts were made with persons not parties to the proceeding. Undoubtedly, the courts should protect non-litigants from unnecessary exposure of their business affairs and papers. But it certainly can be no valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it."

On this subject of the applicability of the Fourth Amendment, the *Baird* case is conclusive. The contracts there were private contracts, between the railroad companies and outside corporations. They pertained primarily to the sale of coal, and it was a serious question whether they were material to the

*Italics are ours.

issues in the case. They certainly disclosed the private business of the defendant with outside parties. They would tend to convict them of violations of law. These matters were all considered. From the point of view of the constitutional objections, it made no difference whether the testimony was called for under the provisions of the Interstate Commerce Act or not. If the production of the books and documents was in violation of the constitutional rights of the defendants, then Congress could not confer the power. Constitutional protection is as much against legislative as against executive or judicial action.

If it was not an unlawful search or seizure to compel a witness in that case to produce the coal contracts belonging to the railroad company, it was not an unlawful search or seizure to compel the witnesses here to produce the record book of the defendant General Paper Company, showing the action of its board of directors, composed of representatives of each of the other twenty-three defendant corporations, and to compel them to produce contracts and books showing the control of the General Paper Company over interstate commerce, and its monopoly of

the trade in paper products, together with the equalization of prices and the division of profits among the participating defendants. The books and papers here involved necessarily relate to the charges which the Government is seeking to substantiate. For the most part, they are the records of the very contracts which it is contended constitute a violation of the Anti-Trust Law. Moreover, every book and paper called for was specifically identified. The defendants and the witnesses have never made any claim that the demands of the Government in this respect are in any way vague or uncertain. They not only knew what books and papers were desired, but had them in court before the examiner.

This discussion necessarily leads to a consideration of the claims made under the Fifth Amendment; in fact, the two subjects are so closely interwoven that we are compelled, to a greater or less extent, to consider them together.

2. The guaranty of the Fifth Amendment, that no person shall be compelled in a criminal case to be a witness against himself, is personal to the witness, and does not protect corporations.

Upon the threshold of this branch of the inquiry we are met with the suggestion that these witnesses are but officers of the defendant General Paper Company and certain other defendants, and that their evidence, if given, will tend to subject those corporations to punishment under the Sherman Law, and to forfeiture of their corporate charters under the laws of the states of Wisconsin and Minnesota. It is further urged that the witnesses themselves will, on account of their connection with the corporations, suffer pecuniary loss through the forfeiture of the charter of the General Paper Company, and through the practical abrogation of the contracts between that company and the constituent concerns. This position necessitates an examination of the precise scope of the constitutional privilege.

We submit that the constitutional guaranty has no application to corporations; that the privilege is personal to the witness; that pecuniary loss or disadvantage furnishes no justification for a refusal

to answer; and that, so far as criminal prosecution is concerned, the witness is amply protected by the Immunity Statute. If, in the course of the discussion of these propositions, we feel called upon to state at some length, principles long since established by the authorities, it will be understood that our excuse is the strenuous insistence of the appellants and plaintiffs in error that they are protected by these constitutional provisions.

The Fourth and Fifth Amendments were, in the main, intended to protect the personal rights of the citizen. There are to be sure, certain provisions such as the inhibition against taking property without due process of law, or for public use without just compensation, which were obviously designed to protect property, and as such they undoubtedly furnish protection for the property of corporations as well as of individuals. Nevertheless, it is hard to believe, when we consider the history and interpretation of the constitution, that the clause, "no person shall be compelled in any criminal case to be a witness against himself," was ever intended or ought to be construed to protect corporations. The history of the principle here crystallized into a constitutional guaranty is too well known to require extended dis-

cussion. We need only refer to the abuses of the inquisition in Continental Europe, followed to some extent in ecclesiastical and star chamber trials in England. Certain harsh practices in this regard gradually crept into common law procedure, until finally the reform agitation, begun in the seventeenth century, resulted in the abolition in England of all inquisitorial methods. To compel a person to give evidence exposing him to criminal prosecution savored too much of the inquisition. It was realized that such arbitrary exercise of judicial power had a dangerous tendency toward browbeating, bullying and the use of physical force and torture. The framers of the Fifth Amendment to our Constitution simply formulated the rule of judicial action thus established.

We venture to say that in no historical recital or judicial utterance has this provision for the protection of the liberty of the citizen ever been expanded to include a corporate entity.

A clear distinction has been taken between constitutional provisions obviously designed for the protection of property howsoever held, and provisions intended on their face to protect personal rights. In the latter case, where the language deals solely with the subject of personal rights of the citizen, it

is an unwarrantable extension of its scope to include corporations within its operation.

We quote from the opinion of Mr. Justice Field, in the *Railroad Tax Cases*, 13 Federal, p. 746 of opinion:

"From the nature of the prohibition in this amendment, it would seem, with the exception of the last one, as though they could apply only to natural persons. No others can be witnesses; no others can be twice put in jeopardy of life or limb, or compelled to be witnesses against themselves, and therefore it might be said with much force that the word persons there used, in connection with the prohibition against the deprivation of life, liberty and property, without due process of law, is in like manner limited to the natural person."

The distinguished jurist then proceeded to demonstrate that the clause relating to the deprivation of property without due process of law, protects the property of corporations. It seems however to have been conceded by him, that corporations do not fall within the scope of the clause providing that no person shall be compelled to be a witness against himself. What we have just said on this question

applies with equal force to the Fourth Amendment.

We now proceed to a discussion of some of the authorities:

In *Counselman v. Hitchcock*, 142 U. S. 547, it will be remembered that Counselman was subpoenaed before the grand jury and asked to disclose his business with the various railroads over which he shipped grain. He was specifically asked about the receipt of rebates from the railroad company, and refused to answer on the ground that his answers might tend to criminate him. The court held that the law as it then stood, was not broad enough to protect him against criminal prosecution on account of anything he might disclose. In the absence of such an immunity statute, therefore, the court decided that he was not obliged to testify. We mention this case simply to trace the history of this legislation extending immunity to witnesses.

After the *Counselman* case, Congress changed the law, and provided that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise."

In *Brown v. Walker*, 161 U. S. 591, the petitioner

Brown, the auditor of the Allegheny Valley Railway Company, was subpoenaed to appear before the grand jury and give testimony concerning the affairs of the company. Among other things he was asked to state the rebates or commissions paid, to whom paid, the dates of the same, and on what shipment, and to state fully all particulars within his knowledge relating to such transactions. Admittedly he obtained all that knowledge as the auditor of the corporation. The court said (page 610 of opinion) :

“If, as was justly observed in the opinion of the court below, witnesses standing in Brown’s position were at liberty to set up an immunity from testifying, the enforcement of the Interstate Commerce law or other analogous acts, wherein it is for the interest of both parties to conceal their misdoings, would become impossible, since it is only from the mouths of those having knowledge of the inhibited contracts that the facts can be ascertained. While the constitutional provisions in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are, therefore, of opinion that the witness was compellable to answer

and that the judgment of the court below must be affirmed."

It will be observed that there appeared to be no question in the mind of the court that the privilege was personal to the witness, and that the immunity in terms extending to him, took away that privilege. The fact that he was an officer of a corporation which might be damaged and subjected to criminal prosecution on account of the evidence given, was of no consequence.

As we have seen, in the *Brimson* case, the court held that an officer of a corporation might be compelled to produce documents before the Commission, and that the court would enforce the mandate of the Commission in that regard.

The question we are discussing was squarely passed upon in the recent case of *Interstate Commerce Commission v. Baird*, 194 U. S. 25. There, in the course of a hearing before the Interstate Commerce Commission, Baird, an officer of one of the defendant railway companies, was asked to produce certain contracts between those companies and various coal companies for the purchase of coal. To the petition filed in the United States Circuit Court to compel the production of the papers and documents

in question, answers were interposed, in substance setting forth the

“right of the defendants to refuse the production of the papers and documents and to decline to answer the questions because the same did not relate to any subject which the commission had the right to investigate and the contracts relate to the private business of persons not parties to the proceedings before the commission; that the witnesses are protected in their right to refuse to produce the contracts or answer the questions by the Fourth, Fifth and Tenth Amendments to the Constitution of the United States; that the contracts were not relevant to the subject matter of investigation before the commission.”

The court said (page 45, *et seq.* of opinion):

“As to the constitutional objection based upon the Fifth Amendment, the act as amended February 11, 1893, expressly extends immunity from prosecution or forfeiture of estate because of testimony given in pursuance to the requirements of the law. The full consideration of the subject and the decision of this court in *Brown v. Walker*, 161 U. S. 591,

renders further consideration of this objection unnecessary. * * *

“As we have seen, the statute protects the witness from such use of the testimony given, as will result in his punishment for crime, or the forfeiture of his estate. Testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure. Indeed, the parties seem to have made little objection to the inspection of the papers; the contest was over their relevancy as testimony. Nor can we see force in the suggestion that these contracts were made with persons not parties to the proceeding. Undoubtedly the courts should protect non-litigants from unnecessary exposure of their business affairs and papers, but it certainly can be no valid objection to the admission of testimony otherwise relevant and competent that a third person is interested in it. * * *

“To unreasonably hamper the commission by narrowing its field of inquiry beyond the requirements of due protection of rights of citizens will be to seriously impair its usefulness and prevent a realization of the salutary purposes for which it was established by Congress.”

At the time this case was decided, the corporations concerned were subject to the penalties under the Interstate Commerce Act as amended March 2, 1903 (32 Stat. at L. 943). The documents were the documents of the corporation. They were desired simply to prove the violation of the law by the corporation, and to subject it to penalties in the form of criminal prosecution. Manifestly, the court assumed as beyond dispute that the guaranty against self-incriminating testimony had no application to corporations.

It seems hardly necessary to argue the proposition that a privilege of the character claimed is personal to the witness. The authorities are numerous and uniform to this effect.

Brown v. Walker, 161 U. S. 597, and cases cited.

Morgan v. Halberstadt, 60 Fed. 592.

Wertheim v. Cont. Ry. & Trust Co., 21 Blatchford, 246.

N. Y. Life Ins. Co. v. People, 195 Ill. 430.

In Re Peasley, 44 Fed. 271.

U. S. Express Co. v. Henderson, 69 Iowa, 40; 28 N. W. Rep. 426.

Gibbons v. Company, 5 Price, 491.

State v. Jack, 69 Kans. 387; 76 Pacific, 911.

This court, in *Brown v. Walker, supra*, held that the privileges were for the protection of the witness alone, and not for that of other parties, and that consequently he could waive it at his pleasure. A party has no control over a witness in this respect, cannot make the claim of privilege for him, and has no ground for complaint that the privilege is erroneously held inapplicable and the answer compelled.

Wigmore on Ev. Vol. 3, § 2270.

Commonwealth v. Shaw, 4 Cushing, 594.

Commonwealth v. Howe, 13 Gray, 26.

State v. Pancoast, 5 N. Dak. 516; 67 N. W. 1052.

The witness either has a personal privilege or he has none. If he has one, it is clear under the decisions he may waive it and testify to any incriminating facts, although they may also tend to incriminate a corporation with which he is connected, or others parties. It cannot be that merely because the witness is an officer of one or more of the defendant corporations, he may not waive his privilege and testify to the facts. If this were so, then the corporation affected would be entitled to an injunction or some other equitable remedy to close his mouth. The very statement of the idea is a demonstration of its absurdity.

But it is claimed in this case that the witness obtained his knowledge solely by reason of the fact that he was an officer of the defendant corporation, and that the papers and books to be produced are the papers and books of the corporation, and therefore that to cause the forcible production of the books and papers of the corporation is to compel it to testify against itself. Let us analyze this argument. In the first place, have the courts ever made a distinction between knowledge which the witness obtained in his own business, and that acquired in the business of other people, and have the courts ever made any distinction between cases in which the papers to be produced were the papers of the witness, and cases where they were the papers of a corporation in his possession as an officer? It is said that a corporate entity can only act through its officers, and that therefore it is in a different position from a partnership, unincorporated association, or individuals. Let us state a case: suppose that a witness is the manager of a large business, firm or unincorporated association; would it be claimed that the knowledge which he obtained as such manager, was privileged, not because it would incriminate the witness, but because it would incriminate his employer? Certainly not. Is a corporation any more entitled to the protec-

tion of the law than any other employer, than a co-partnership, an association, a blood relation, a neighbor, or a friend? But, say the appellants and plaintiffs in error, the business of corporations of necessity must be done through officers. We say the business of large firms and of individuals engaged in great commercial transactions to-day must of necessity be done through managers, employees and servants, and therefore that a corporation is no more to be protected than any other employer. It seems to us that the decisions of this court, which we have cited and those which we shall hereafter cite, conclusively settle this question. To be sure, the question was not specifically considered by this court in those cases, but in the *Brimson* case the witness was required to produce the documents of a corporation and testify to facts within his knowledge solely as an officer. In *Brown v. Walker*, *supra*, the witness was required to testify to facts solely within his knowledge, as an officer of the Allegheny Valley Railway Co., and the court considered the question whether the privilege was personal to the witness and might be waived. In the *Baird* case, 194 U. S. 25, this question was necessarily involved, the witness, as we have seen, having been required to testify to facts the knowledge of which he obtained as an officer of the de-

fendant railway company, and to produce documents belonging to the railway company. The court reaffirmed *Brown v. Walker*, and held that the witness was protected by the immunity statute and must produce the documents. It will be said that the court did not pass upon this question. Our answer is that it must of necessity have been passed upon. It seems strange that if the objection was tenable the distinguished counsel and the court in that case entirely overlooked it. It is significant that in all the line of decisions construing this most important amendment, enacted for the liberty and protection of the citizen, no federal court has ever construed its provisions to protect the corporate entity, or allowed a witness to set up the privilege of such corporation. We are not, however, without direct authority upon this proposition. We have noted the language of Justice Field in the *Railroad Tax Cases*, 13 Fed. 746, and we now invite the court's attention to the following cases:

The case of *Morgan v. Halberstadt*, *supra*, furnishes a striking illustration of the point we are making. In a libel suit against a newspaper, one Jones, being called to testify, announced that he was a share-holder in the New York Times Association, and also its treasurer. He claimed a

privilege against answering for the reason that it would tend to prove the publication of a libel by the newspaper. The defendant's counsel asked the court to instruct the witness that if the question would tend to criminate him, he might refuse to answer. The court said p (596-7) :

"It is a sufficient answer to the contention of plaintiff in error to refer to the well settled principle that such privilege belongs exclusively to the witness. The party to the suit has no right to insist upon it, except when he is himself the witness. And if the witness waives his privilege, or the court disregards it, and requires him to answer, the party has no right to interfere or complain of the error. *Cloyes v Thayer*, 3 Hill, 564; *Southard v. Rexford*, 6 Cow. 255; *Ward v. People*, 6 Hill, 144; *People v. Carroll*, 3 Parker, Cr. R. 73."

New York Life Insurance Co. v. People, *supra*, involved a proceeding brought by the State against the company to recover a penalty imposed for discrimination in rates between parties insured. The statute provided a penalty of not less than five hundred nor more than one thousand dollars, to be sued for and recovered in the name of the people of the State of Illinois by the state's attorney in the county

in which the offense was committed, one-half to be paid into the county treasury and the other half to go to the informant. The agent of the Insurance Company was required to testify to the discrimination over his objection that the evidence called for would tend to criminate the company. The court said (p 432):

"It is insisted that the trial court erred in requiring the agent to testify, over the appellant's objection, to the facts showing the rebate and discrimination prohibited by the statute and for which the penalty is imposed. It is said that the agent was thereby compelled to criminate himself. If the privilege invoked be applicable to such a case it is a personal one, and inasmuch as the witness did not himself claim the privilege the company cannot do so, and it is the only appellant here."

In *State v. Jack, supra*, a proceeding was instituted to investigate before the court the existence of a combination of coal operators in violation of the Anti-Trust Law of the State of Kansas. The witness objected to answering on the ground that the testimony would tend to convict him of a crime and subject him to penalties and forfeitures. Upon the argument it was contended also that the corporation

would be subjected to forfeiture of its charter, rights and franchises. It was further urged that the witness was a stockholder in the corporation. The court said:

“The constitutional provision was intended for the protection of the witness. The hurt must be his own. He must himself be included in the terms of the law before he has just grounds for complaint.”

This case has recently been affirmed by this court.

In *United States Express Co. v. Henderson*, *supra*, the same question was raised, where an employee of a corporation refused to produce the books upon the ground, among others, that they would incriminate his employers. The Supreme Court of Iowa said:

“We think that the court was right in adjudging Frazier to be in contempt. The only question raised is as to whether it was the privilege of the witness to refuse to produce the books under the section of the Code above cited. * * *

If it had been claimed that the books called for tended to render the witness criminally

liable, it may be that he could not properly be required to produce them. But the claim is simply that they tended to render the witness' employers criminally liable. The case, it seems to us, is not different from any other where a witness is asked to produce a book or paper of his employer. If the book or paper is not within his control, that, of course, would be sufficient reason for not producing it. But the refusal in this case is not based upon that ground. It is based upon the identity of the witness with his employers. But the fact the employers had taken on a corporate character did not identify with themselves an employe to any greater extent than any employe is identified with his employer."

Gibbons v. The Company, supra, was a bill filed by the plaintiff for discovery. One of the defendants demurred upon the ground that his answer would tend to incriminate a corporation defendant which was his employer. The demurrer was dismissed, the court saying:

"I never knew an instance of a clerk demurring to a bill of this sort. * * * I have no difficulty in saying that the demurrer cannot be maintained, for it is clear that the clerk and the defendants cannot demur on

the ground that his principals are liable to penalties and his answer could not be read against them."

A very brief notice of the cases cited by the appellants and plaintiffs in error upon this question will be sufficient.

The case of *Bank of Oldtown v. Houlton*, 21 Maine, 502, seems to us to have no bearing whatever upon this question. The principle enunciated there was simply that a stockholder and officer of a bank was the real party in interest and could not be compelled to testify in an action at law. The court merely applied the old principle that a party in an action at law (the action being one of assumpsit) could not be compelled to be a witness, in fact, was not competent as a witness. There was no question involved under the Constitution.

The case of *State v. Simmons Hardware Co.*, 15 L. R. A. 675; 109 Mo. 118, perhaps comes a little nearer the question. In that case, however, it will be noted that there was no immunity statute protecting the witness, and that he might be subjected to criminal prosecution, fine and penalty. What was said as to the corporation does not seem to have been either necessary to the decision or of any particular importance.

The case of *Davis v. Lincoln Nat. Bank*, 4 N. Y. Supp. 373, the court below said had no bearing whatever upon this question, and it seems to us that the only question involved was the production of certain books and papers under the Code provision of the state of New York. The constitutional protection does not seem to have been mentioned, and as far as we have been able to discover, this case never has been cited or approved. In fact, in the decision of Judges Lacombe and Wallace, in the case of *Morgan v. Halberstadt*, 60 Fed. 592, this case was not cited or considered, and the court held to the contrary.

3. *Any privilege which may exist is covered by the immunity statute (32 Stat. at L. 904, Supp. U. S. Comp. Stat. 1901, p. 367), which is as broad as the constitutional protection. If the Fifth Amendment is held to extend to corporations, the immunity statute must be likewise extended.*

Assuming for the purposes of this argument that we are wrong in our contention, and that the Fifth Amendment to the Constitution protects corporations as well as individuals, then it is evident that the immunity statute should also be construed to protect corporations as well as individuals from prosecution; and in what we submit under this head, we desire it to be understood that we are here proceeding upon the assumption that the court may come to the conclusion that corporations are so protected.

The immunity statute which we refer to (32 Stat. 904) provides as follows:

"That no person shall be prosecuted, or be subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit or prosecution under said acts; provided further, that no person so tes-

tifying shall be exempt from prosecution or punishment for perjury committed in so testifying."

The language here employed is the same as that found in the section of the Interstate Commerce Act, exempting from prosecution witnesses who are required to produce evidence, documentary or otherwise, before the Commission. That act reads as follows:

"Be it enacted, &c., That no person shall be excused from attending and testifying, or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled, 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to

a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena or the subpoena of either of them, or in any case or proceeding: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying." Compiled Statutes 1901, page 3173; 27 Statutes, 443.

Counsel for the appellants undertook in the court below to make some distinction between the effect of the Immunity Statute under the Anti-trust Law, and the immunity provision of the Interstate Commerce Act, on the ground that the former statute contains no clause in terms requiring a party to produce documents and papers. The obvious reason for this omission in the Anti-Trust Act is that the anti-trust laws are enforced entirely in the courts, and the courts inherently have the power to compel the production of books and documents and the testimony of witnesses, which power it was necessary for Congress to confer upon a non-judicial body like

the Interstate Commerce Commission. *Interstate Commerce Comm. v. Brimson, supra.*

It is not a fair argument to say that, because this statute does not require a witness to appear before the court or an examiner and testify, or prescribe that he shall not be excused from testifying on the ground that the testimony will tend to incriminate him, it is robbed of its effectiveness as an immunity statute, or differentiated from the immunity statute in question. In the first place, courts need no substantive statute conferring this power, but only an immunity conferred upon the witness in order that the court may exercise its undoubted authority; and, second, the command to appear and testify is valueless without the immunity statute. Suppose Congress had provided that witnesses should be compelled to appear before the Interstate Commerce Commission and produce documents and papers, and testify, and that they should not be excused from testifying on the ground that the information would tend to convict them of a crime, but had not provided an immunity. Would the statute have been constitutional? Certainly not.

It is worthy of note that there is a similar provision requiring witnesses to appear and testify before the Department of Commerce and Labor.

(Supp. to Comp. Stat. 1903, p. 45.) This provision makes applicable all the provisions of the Interstate Commerce Act, on the subject of immunity, and requires the attendance of witnesses, and the production of documents, before the Commissioner of Corporations. See also, statutes providing for the appearance of witnesses before investigating committees of Congress. (*In Re Chapman*, 166 U. S. 661.)

The substantive part of the immunity statute in this case is identical with that of the Interstate Commerce Act. It provides that no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter or thing concerning which the witness may testify or produce evidence, documentary or otherwise. Speaking of the immunity statutes passed in aid of the enforcement of the Anti-Trust Law and the Interstate Commerce Law, it is to be said that they were both enacted under the same power conferred by the Constitution upon Congress, namely, the power to regulate commerce between the states and with foreign nations. They both belong to a series of acts of Congress which have in view the same general object; one, particularly to regulate persons and corporations, principally railroads, engaged in interstate

commerce, and to enable the shipper to obtain redress for discriminations and excessive rates; the other, equally applying to railroads, and intended to regulate corporations and persons engaged in other branches of interstate commerce, and to enable individuals to obtain redress for injuries on account of monopolies and contracts in restraint of trade. This being so, the construction of the immunity statute, intended to accomplish the same object, must be the same in both cases. No possible distinction can be made between the immunity clause in the Anti-Trust Act and the immunity clause in the Interstate Commerce Act.

For the purposes of this branch of the argument, we shall assume that the Fifth Amendment applies to corporations, for if the word "person" in that amendment can be said to include a corporate entity, then by a parity of reasoning, the word "person" in the Immunity Statute should be given the same construction. The latter being a remedial statute, the presumption must be that it was intended to be as broad as the provision of the Constitution which it was designed to cover, and should therefore be given the same construction.

People v. Butler St. Fdy. Co., 201 Ill. 255.

State v. Jack, 76 Pacific, 915;

Interstate Commerce Comm. v. Baird, 194 U. S. 36 and 37.

In *Brown v. Walker*, this court said (p. 596) :

"It can only be said in general that the clause should be construed, as it was doubtless designed, to effect a practical and beneficent purpose, not necessarily to protect witness against every possible detriment which might happen to them from their testimony, nor to unduly impede, hinder or obstruct the administration of criminal justice. That the statute should be upheld, if it can be construed in harmony with the fundamental law, will be admitted. Instead of seeking for excuses for holding acts of the legislature power to be void by reason of their conflict with the Constitution, or with certain supposed fundamental principles of civil liberty, the effort should be to reconcile them if possible, and not to hold the law invalid unless, as was observed by Mr. Justice Marshall in *Fletcher v. Peck*, 6 Cranch, 87, 128. the opposition between the Constitution and the law be such that the judge feels a clear and strong conviction of their incompatibility with each other."

In the *Baird* case the court also said, speaking

of the amended clause in the Anti-Trust Act (p. 37) :

“The provision in the statute under consideration, being intended to enlarge, rather than limit, the application of previous terms, should not receive so narrow a construction as to defeat its purpose.”

The appellants and plaintiffs in error claimed in the courts below that the Constitution should have a liberal construction, to include not only penalties and forfeitures, but anything in the nature of a penalty or forfeiture, and, as the immunity statute excepts certain classes of persons from prosecutions, should have a strict construction. Consequently, it was argued the Constitution includes certain penalties and forfeitures, or pecuniary losses in the nature of forfeitures, which are not protected by the immunity statute. We shall have occasion to consider what penalties and forfeitures are within the meaning of the Fifth Amendment, but, for the purpose of this argument, we are contending that the opposite construction should be given to this immunity statute. It was manifestly intended to enable the court either in public prosecutions or in civil actions for the prevention of monopolies, or for the redress of grievances by private individuals, to com-

pel witnesses to testify in any case where, in the absence of the statute, they would have been protected by the Fifth Amendment. This obvious intention of the statute is strengthened by a consideration of the objects to be attained, and by a brief consideration of the history of this law. It is well known that the Interstate Commerce Law was passed principally to regulate railway corporations in carrying on interstate commerce, and to enable the United States by prosecutions to prevent violations of the act, and private individuals to insure redress for their grievances.

In the *Counselman* case it was held that the Immunity Statute was not sufficient, as it only protected the witness against the use of the testimony against him in some subsequent proceeding. It may well be said, therefore, that the immunity clause was not carelessly framed; it was framed in view of this decision, and after it was framed it was submitted to the careful scrutiny of able counsel, and sustained by the decision of this court in *Brown v. Walker*. Undoubtedly then, and as the natural sequence, the Congress, in passing the Immunity Statute in the Anti-trust Law, had the same object in view as had thus been accomplished under the Interstate Commerce legislation. We have seen

that this law was principally aimed at monopolies and restraints of trade imposed by large corporations. While in the case of the Interstate Commerce Law its provisions apply with equal force to individuals, yet it is a well known fact that in its criminal and preventive features it was principally aimed at corporate aggression. Two propositions are therefore evident; first, that when Congress passed this Immunity Statute, it had in mind the protection of the witness against any criminal prosecution or the infliction of any penalty and forfeiture which the Fourth and Fifth Amendments were designed to cover; second, that it was intended to enable the United States or private individuals to enforce the provisions of the Anti-trust Act against corporations. It is not necessary to claim that Congress had in mind that the Fifth Amendment applied to corporations. It is sufficient for this argument to say that it must be presumed that Congress intended the protection of this Immunity Statute to be as broad as the application of the Fifth Amendment* as it had been construed in previous decisions of this court; and, giving it that construction, it will accomplish the object intended by Congress. Manifestly, if the court is going to give to the Constitution

*See language, *People v. Butler, St. Fdg. Co.*, 201 Ill. 255.

an unnatural and strained interpretation to include corporate entities, it should not go to the other extreme and construe the immunity statute so strictly as to enable corporations to escape punishment. If the construction contended for is correct, Congress has enabled the court to enforce a rule against individuals, firms and partnerships which cannot be enforced against corporations. As we have seen, a person may then be required to testify against his neighbor, his employer, his partner, or his blood relation, but cannot be compelled to testify against a corporation of which he happens to be an officer. If this construction is to be given to the immunity clause in the Sherman Act, it must also with equal reason be applied to the immunity clause in the Interstate Commerce Act, and the line of decisions of this court holding that this immunity is effective would thereby be nullified. Such a construction, under the circumstances, would involve a severe reflection upon the sanity of the legislative body.

But it is claimed in this case that even if the constitution only protects the witness against disclosures which may tend to subject him to penalties and forfeitures for a crime, yet, under the broader rules and principles of equity, he is protected against any dis-

closure which might tend to subject him to a penalty or forfeiture, or "anything in the nature of a penalty or forfeiture," even though civil in its nature; that, if the constitution does not apply to corporations, the equity principles do, and relieve the witness and the corporation from disclosing any facts which might tend to convict them of a crime.

This raises a rather interesting question, but one we believe easy of solution. We contend, however, as we have heretofore argued, that when a witness is called in a pending action to prove facts tending to show the infraction of laws, the limit of the guaranty of silence is that provided for by the Fifth Amendment to the Constitution, and that, when this constitutional provision was enacted (which, as we have seen, embodies an unwritten rule of the English law), it was intended to be the sole limit of the right of silence.

We submit, therefore, this proposition, that if the word "person" in the Fifth Amendment to the Constitution includes corporations, then the word "person" in the immunity statute should be given the same construction and should be held to protect the witness and the corporation against every penalty and forfeiture included within the constitutional protection.

We now come to a consideration of what constitutes a penalty or forfeiture, as those terms are used in connection with the Fifth Amendment.

A careful determination of this question is important in view of the position taken in the court below by counsel for the appellants. In their brief used upon the hearing and filed with the court in Wisconsin, that position was expressed with great clearness as follows:

“But the common law privilege which still exists, in the absence of a statute removing it, is broader than the constitutional privilege. The latter is limited to matters which may tend to criminate the witness or at the utmost, may subject him to a prosecution for a penalty or forfeiture in the nature of a criminal prosecution. And this constitutional provision, of course, operates to prevent the legislature from enacting any law inconsistent therewith; but the common law privilege, as we have seen, which exists independently of the constitution, and in the absence of any statute abrogating it, is available to excuse the witness from testifying to any matter tending to subject him to any loss or detriment in the nature of a forfeiture or penalty.”

It will be observed that counsel conceded without qualification the principle that the constitutional guaranty protects the witness against exposure to only those penalties or forfeitures which are in the nature of a criminal prosecution. On the other hand, it is asserted that there is a common law privilege broader than this, which operates to protect the witness from loss or detriment in the nature of a forfeiture or penalty whether the element of a criminal prosecution be present or not. The fallacy involved in this comparison of the so-called common law privilege of protection in equity against the enforcement of forfeitures and penalties and the constitutional privilege against the compulsory giving of testimony against oneself in criminal cases, will be apparent when we consider the different senses in which the words "forfeiture" and "penalty" have been employed by the courts in dealing with these subjects.

The guaranty found in the Fifth Amendment is, of course, limited in its operation to criminal cases. In determining its application in specific instances, the courts have found it necessary to consider with some care what should be regarded as a criminal case within the scope of the amendment. There are various modes of punishment inflicted by law for the

commission of crime. The punishment may be visited directly upon the person through a sentence of imprisonment, or it may call for a deprivation of property to be turned over to the state. In the latter case it is usually a fine of an arbitrary sum of money. However, it is obvious that on principle any proceeding to deprive one of property as a punishment for crime must be regarded as a criminal case. Consequently, it has been held by this court that a proceeding to forfeit specific goods under the revenue laws on account of the owner's perpetration of a fraud upon the government in violation of the law, will be deemed a criminal case in this connection. Now a fine or a sentence of imprisonment for crime may be and is commonly spoken of as a penalty, and a deprivation of property for the commission of crime, as in the *Boyd* case, has been called a forfeiture. The penalty or forfeiture in either case is a punishment for the commission of a public offense, and it is only in this sense that the terms have ever been used by any court in discussing the operation and effect of the Fifth Amendment to the Constitution.

Let us now consider the meaning of these words as they appear in the standing maxim of equity that equity will not lend its aid to the enforcement of a

forfeiture or penalty. With the adjustment of rights and duties as between the individual and the state, equity does not have, and never has had, any direct concern; but with the adjustment of relations contractual and otherwise, between individuals, equity has always exercised its authority and jurisdiction. One of the most important, as well as one of the earliest functions of courts of equity, lies in the direction of relieving against the hardships which might be worked by one individual upon another under the inflexible rules of common law. For example, where a party was, under the technical rules of law, entitled to the penalty named in a bond or the forfeiture of an estate under a land contract, equity has always regarded the enforcement of the penalty or forfeiture as unconscionable where justice could be done between the parties in any other way. The principle has been admirably stated by Mr. Justice Story:

“In short, the general principle now adopted is that, wherever a penalty is inserted merely to secure the performance or enjoyment of a collateral object, the latter is considered as the principle intent of the instrument, and the penalty is deemed only as accessory, and, therefore, as intended only to secure the due performance thereof or the damage

really incurred by the non-performance. In every such case the true test generally, if not universally, by which to ascertain whether relief can or cannot be had in equity, is to consider whether compensation can be made or not. If it cannot be made, then courts of equity will not interfere. If it can be made, then, if the penalty is to secure the mere payment of money, courts of equity will relieve the party, upon paying the principal and interest. If it is to secure the performance of some collateral act or undertaking, then courts of equity will retain the bill, and will direct an issue of *quantum damnificatus*; and when the amount of damages is ascertained by a jury, upon the trial of such an issue, they will grant relief upon the payment of such damages." Story's Eq. Jur., § 1314.

Reference is also made to Pomeroy on Equity Jurisprudence, 2nd Ed., Vol. 1, Section 432, *et seq.* Manifestly, the penalties and forfeitures which play so important a role in equity jurisprudence are those growing out of the contractual relations existing between individuals. They are totally disassociated from any principle of public policy, and concededly could be enforced were it not for the interposition

of equity asserting the right to compel the dominant party to desist from pursuing an unconscionable advantage. The question of right and wrong is one entirely between the parties themselves, and equity merely says to the creditor that he shall have from his debtor only that which in good conscience he ought to have regardless of any stipulation for a penalty or forfeiture of estate which may have been exacted in the bond or contract. It should be noted that equity carries the principle to the full length and consistently refuses to grant discovery which will aid in the enforcement by one party against the other of such penalty or forfeiture.

It must be apparent that these penalties and forfeitures which have been known to equity from the earliest times and have been clearly defined for centuries, are radically different from those spoken of in connection with the Fifth Amendment. Can there be any similarity between the penalty of a bond or the forfeiture of an estate, and those penalties or forfeitures which have been imposed for the commission of crime? Was equity ever known to interfere in any way with the imposition of forfeitures and penalties at the instance of the state as a punishment for crime? It might as well be said that the chancellor has authority to enjoin the King and his

agents from carrying out a sentence of death or imprisonment. We venture to assert that the books may be searched in vain for any trace of an equitable jurisdiction over criminal penalties or forfeitures. To invoke the operation of this ancient and salutary maxim of equity in a case of the sort now under consideration, is nothing more nor less than a bold attempt to pervert its meaning so as to cover matters for which it was never intended. Its purpose has always been to relieve the weak from the enforcement of unconscionable contracts at the hands of the strong. It was never designed as a cloak for malefactors to shield them from the consequences of their unlawful deeds. Here the government seeks not even to punish, but only to restrain the continued exercise of functions and the performance of acts which have been declared to be unlawful. In its attempt to secure the evidence necessary to establish the fact of the combination and conspiracy, it is met with this suggestion, that equity will not compel disclosures which may result to the parties and to the witnesses in some loss or disadvantage in the nature of a penalty or forfeiture. In so far as the penalty or forfeiture may be criminal in its character the guaranty of the Fifth Amendment applies, and as we shall see, is entirely saved by the immunity stat-

ute; in so far as the penalty or forfeiture is other than criminal, in so far as it involves the loss or forfeiture of the claim to a continued violation of the laws of the land, there is no principle either of constitutional law or of equity jurisprudence which may be invoked to relieve against it.

A review of some of the authorities will serve to enforce the principles we have just been considering. For example, it was settled at an early date in judicial history that pecuniary loss to the witness was not one of the penalties or forfeitures intended to be protected against by the constitution. The leading authority in this country on the subject is the opinion of Chief Justice Shaw, in *Bull v. Loveland*, 10 Pickering, 9. That opinion has been followed uniformly by all of the courts in the United States.

Greenleaf on Ev., Vol. 1, § 452 (15th Ed.);
Bull v. Loveland, 10 Pick. 9;
Baird v. Cochran, 4 Sergeant & Rawles, 396;
Lowney v. Perham, 20 Maine, 240;
Ward v. Sharp, 15 Vt. 115;
Harper v. Borough, 6 Iredells, 30;
Robinson v. Neal, 21 Ky. 212.

It is also held that a penalty of forfeiture must

be penal in its nature, as distinguished from pecuniary loss suffered as a consequence of civil liability.

Boyd v. United States, 116 U. S. 616;

Lees v. United States, 150 U. S. 476;

Huntington v. Attrill, 146 U. S. 657;

Brady v. Daly, 175 U. S. 148;

City of Atlanta v. Chattanooga Fdy. & Pipe Co., 101 Fed. 900;

State v. Jack, 69 Kans. 387; 76 Pacific, 911;

State v. Standard Oil Co., 61 Neb. 28; 84 N. W. 413;

Southern Ry Co. v. Bush, 122 Ala. 470; 26 Southern, 168;

Levy v. Superior Court, 105 Calif. 600; 38 Pacific 965;

Ames v. Kansas, 111 U. S. 449;

Wigmore on Ev., § 256, Vol. 3;

Beach on Private Corporations, Vol. 2, § 840.

In the *Boyd* case, as we have already had occasion to observe, the statute in question, providing for a forfeiture of goods, was held to impose a penalty and forfeiture as a punishment for the crime charged. The enforcement of such a penalty against the guilty party was naturally held to be a criminal case within the meaning of the Fifth Amendment. The word "forfeiture" as used in that case of course

meant forfeiture in the sense of a penalty for crime.

The same principle was laid down in *Lees v. United States, supra*, where the statute provided that any person violating the act prohibiting the importation and migration of foreigners and aliens under contract "shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor, including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the Circuit Court of the United States." Mr. Justice Brewer, writing the opinion of the court, said (p. 480):

"This, though an action civil in form, is unquestionably criminal in its nature, and in such a case a defendant cannot be compelled to be a witness against himself. It is unnecessary to do more than to refer to the case of *Boyd v. United States*, 116 U. S. 616. The question was fully and elaborately considered by Mr. Justice Bradley in the opinion delivered in that case. And within the rule there laid down it was error to compel this defendant to give testimony in behalf of the government."

In *Brady v. Daly, supra*, the court had before it a suit brought under § 4966 of the Revised Statutes, providing among other things that any person publicly performing any dramatic composition in violation of the copyright laws, without consent, etc.,

“shall be liable for damages therefor, such damages in all cases to be assessed at such sum not less than one hundred dollars for the first and fifty dollars for every subsequent performance as to the court shall appear to be just.”

In the court below it was held to be error to introduce the testimony of the defendant Brady, on the ground that the testimony tended to subject him to penalty and forfeiture. Subsequently the case was opened and other testimony added. While the court does not specifically mention the question of penalty and forfeiture, the finding was inconsistent with the opinion of the lower court. It was held, Mr. Justice Peckham writing the opinion, that the penalty mentioned in the statute was in the nature of liquidated damages, inasmuch as the whole recovery was given to the proprietor. The court said:

“The statute itself does not speak of punishment or penalty, but refers entirely to the damages suffered by the wrongful act.” • • •

"The further provision of the statute that those damages shall be at least a certain sum named in the statute itself, does not change the character of the statute and render it a penal instead of a remedial one."

Huntington v. Attrill, *supra*, cited with approval in the *Brady* case, is the leading authority containing an exhaustive review of other cases on the subject. The facts there were as follows: Under the New York statute a director, signing and making oath to a certificate which he knew to be false, stating that the whole capital stock had been paid in, became thereby liable for all of the debts of the corporation. The question raised was whether the statute was a penal one or whether it merely imposed a civil liability. The court said that the question depended upon whether the purpose of the statute was to punish an offense against the public justice of the state, or to afford a private remedy to the person injured by the wrongful act. Among other things it was said (p. 666):

"In the municipal law of England and America, the words 'penal' and 'penalty' have been used in various senses. Strictly and primarily, they denote punishment, whether corporal or pecuniary, imposed and enforced

by the state, for a crime or offense against its laws. *United States v. Reisinger*, 128 U. S. 398, 402; *United States v. Chouteau*, 102 U. S. 603, 611. But they are also commonly used as including any extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered. They are so elastic in meaning as even to be familiarly applied to **cases of private contracts, wholly independent of statutes, as when we speak of the 'penal sum' or 'penalty' of a bond.* In the words of Chief Justice Marshall: 'In general, a sum of money in gross, to be paid for the non-performance of an agreement, is considered as a penalty, the legal operation of which is to cover the damages which the party, in whose favor the stipulation is made, may have sustained from the breach of contract by the opposite party.' *Tayloe v. Sandiford*, 7 Wheat. 13, 17.

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the state, and which, by the English and American constitutions, the

*Italics are ours.

executive of the state has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal."

The attention of the court is invited to the very clear statement of the distinction between a penal sum, such as a penalty of a bond, and the penalty imposed by statute as a punishment for crime. The court, summing up the subject, said (p. 668):

"The test whether a law is penal in the strict and primary sense, is whether the wrong sought to be redressed is wrongful to the public or wrongful to the individual, according to the familiar classification of Blackstone."

It is a noticeable fact that this case involves a construction of the same statute in New York which was considered by the Court of Appeals of New York in *Merchants Bank v. Bliss*, 35 N. Y. 412, cited by the appellant. In that case the Court of Appeals of New York held that such an action was an action upon a liability created by statute for a penalty or forfeiture, and therefore was barred in three years. If the case can have any possible bearing upon the question at issue, it is in direct conflict with *Hunting-*

ton v. Attrill, and it is to be noted that the court in the latter case cited and distinguished it. (See page 678 of opinion.)

In *Atlanta v. Chattanooga Foundry & Pipe Co. supra*, it was held that suits brought to recover damages, under § 7 of the Sherman law, are civil in their nature and not penal.

In *State v. Jack, supra*, a proceeding was instituted under the anti-trust law of Kansas for the investigation of a combination of coal operators. An officer of one of the defendant corporations declined to testify, on the ground that the evidence, if given, would subject him to imprisonment, fine, forfeiture and penalties, contrary to the constitution. The anti-trust law contained an immunity provision, reading as follows:

“That any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify, neither shall the evidence of such witness be used against him in any criminal proceeding.”

The witness's contention amounted to saying that he would be subjected to loss as a stockholder in the defendant corporation, because the evidence, if

given, would tend to a forfeiture of the charter, rights and franchises of the corporation by the state. The court said:

“Section 4 of the act provides that, for a violation of any of the provisions of the act by a corporation or any of its officers or agents the corporation shall, upon proper proceedings therefor, forfeit its charter, rights and franchises. It is urged that the amnesty provided by section 10 is not complete, as it affords no immunity to a stockholder in any such corporation. There is nothing in the record disclosing appellant to be a stockholder, an officer, or agent, or otherwise connected with any corporation that may in any manner be affected or suffer as the result of his disclosure as a witness. * * * The hurt must be his own. He must himself be included in the terms of the law before he has just grounds for complaint. **State v. Smiley*, 65 Kan. 240; 69 Pac. 199. However, it was never intended that the immunity afforded the witness by the act should extend to and protect the stockholders, officers, and agents of a corporation, as such. The immunity extends to the

*Affirmed *Smiley v. Kansas*, 196 U. S. 447

witness alone. It was not contemplated that it should be made use of as a pretext for securing immunity to others. That the immunity afforded the witness, to be complete, must extend to the officers, agents, and stockholders of a corporation, as contended for by appellant, is too remote."

State v. Standard Oil Co., supra, was a proceeding in the nature of a *quo warranto*, instituted under the laws of Nebraska, to prevent the Standard Oil Company from continuing business in the state. Under the law the attorney of the state was authorized to demand of the defendant permission to inspect and copy any book, paper or document in the possession of the adverse party or under his control, containing evidence relating to the merits of the action. A motion was made by the attorney general for such inspection. It was resisted, on the ground that the purpose of the suit was the imposition of a penalty or forfeiture, and that to grant the order would require the defendant to furnish evidence against itself in a criminal case, in violation both of the Constitution of the United States and of the Constitution of Nebraska. The court held that to prevent the corporation from continuing to do business in the state after it had violated the law was

not the infliction of a penalty or forfeiture within the meaning of the constitutional guaranties. The court said:

“And it will be also observed that the third section provides a civil remedy on behalf of the state for the commission of these same acts. It is true that the forfeiture of the charter of a domestic corporation is a consequence of violating the law, but it is not a penal consequence. The proceeding by *quo warranto* is a civil remedy. It is the means employed by the state to cancel and recall a privilege which the corporation proceeded against has abused. *State v. Nebraska Distilling Co.*, 29 Neb. 700; 46 N. W. 155; *Ames v. Kansas*, 111 U. S. 449, 4 Sup. Ct. 437, 28 L. Ed. 482 ; *State v. City of Topeka*, 31 Kan. 452, 2 Pac. 593; 2 Beach, Priv. Corp. § 840. The fourth section is, in substance, like the third. It provides that a corporation domiciled in another state may, by reason of having done one or more of the criminal acts mentioned in the second section, be excluded from the state. The attorney general is authorized to proceed against it by injunction or *quo warranto*. The latter remedy, which

is included in the phrase 'other proper proceedings,' may, with propriety, be resorted to for the purpose of preventing a corporation created in one state from doing business in another contrary to law. Title 23, Code Civ. Proc.; *State v. Western Union Mut. Life Ins. Co.*, 47 Ohio St. 167, 24 N. E. 392, 8 L. R. A. 129; 2 Beach, Priv. Corp. § 841."

This court held in *Ames v. Kansas*, *supra*, that a *quo warranto* proceeding was not a criminal proceeding; that it was in the nature of a writ of right to inquire by what right one who usurped or claimed franchises or liberties claimed the same.

In *Southern Ry. Co. v. Bush*, *supra*, the court had before it an Alabama statute, providing that personal representatives may maintain an action for the wrongful act, omission or negligence of another person, whereby the death of the testator or intestate was caused. The statute also provided the measure of damages. The plaintiff propounded to the defendant certain interrogatories, which the latter declined to answer, on the ground that they would tend to subject him to a penalty or forfeiture under the statute. The court said:

If the damages recoverable in an action of this character were, strictly speaking, a

penalty imposed by law, we would be inclined to give to our constitutional provision on the subject the some construction that has been placed on the similar provision of the federal constitution, and to hold that the defendant could not be compelled, even by statute, to give or furnish evidence in aid of a recovery against it. But while the damages recoverable are undoubtedly, under our former rulings, punitive in their nature, and not compensatory, they are not, in a strict sense, a penalty; nor is the action penal, or quasi criminal, within the meaning of the constitutional provisions as above construed. The statute is remedial, and not penal, and was designed as well to give a right of action where none existed before, as to 'prevent homicides;' and the action given is purely civil in its nature, for the redress of private, and not public, wrongs."

Levy v. Superior Court, supra, brought up for consideration a statute providing for an order for disclosure by an administrator as to property disposed of by him without authority. It was, among other things, provided that any judgment recovered therefor should be for double the value of the prop-

erty assessed by the court or jury, or for a return of the property and damages in addition thereto equal to its value. The defendant claimed the privilege of refusing to testify, on the ground that the disclosure would submit him to the penalty or forfeiture within the meaning of the Fifth Amendment. The court considered the *Boyd* case, and distinguished it, holding that the action in question was a civil action for the conversion of property, and that the imposition of double damages was not the infliction of a penalty or forfeiture as punishment for a criminal act.

The following statement by Mr. Wigmore, in § 2257, clearly points out the distinction:

“The distinction between a penalty and a forfeiture is a shadowy one; though both are in essence contrasted with a civil liability. A penalty may be defined as a liability to pay money or to yield up a public privilege by way of punishment imposed by law. When the penalty lies in the yielding up of a privilege, a distinction therefore seems proper between inflicting a punishment and restraining the continued improper exercise of functions. The process of impeachment seems to fall in the former class; but most other processes of

removal or restraint would ordinarily come within the latter description. When the penalty lies in the payment of money, it seems clear that a mere unregulated increase of compensation under the name of exemplary damages is still a civil liability in essence; and therefore the same consequence ought to follow when by statute a fixed sum, or a multiple based on actual loss, is prescribed. In any case, the form of the proceeding is not decisive, for in the name of the state a proceeding essentially civil is sometimes conducted; and, conversely, a specific penalty for wrongdoing is sometimes made recoverable at the suit of an informer or other person by way of encouraging detection and prosecution."

All of the authorities cited by the counsel in the court below on this subject can be distinguished upon the lines we have suggested. Most of them are cases where the court had under consideration no question under the Fifth Amendment, but where the court was applying the principle of the equitable doctrine that a court of equity would not enforce a forfeiture or by discovery aid a court of law to do the same.

A fair illustration is the case of *Livingston v. Tompkins*, 4 Johnson's Ch. 416, in which a suit was brought to obtain the forfeiture of the right of the complainant to run a steamboat between New York and New Jersey. The court said:

"It may be laid down as a fundamental doctrine of the court that equity does not assist the recovery of a penalty or forfeiture, or anything in the nature of a forfeiture.
* * * The great principle is that equity will not assist in the recovery of any penalty or forfeiture when the plaintiff may proceed at law to recover it."

Everything else in that case must be understood in the light of the facts which were before the court and the principles which were being invoked.

In the case of *In Re Kip*, 1 Paige, 601, the witness Kip had been called upon to give testimony before a master in ejectment proceedings brought by one Van Kleeck against the elders, ministers and deacons of the Reformed Protestant Dutch Church, in the city of New York, and others. Kip appeared before the master, but refused to testify, on the ground that he was the treasurer and one of the corporators of the Dutch Church, and was also a pew-

holder in two churches which were on land the title to which depended upon the same question which arose in the cause. Chancellor Walworth held that the witness was not so far a party to the suit (at law) as to be excused from testifying against the corporation. The principal question considered in the opinion is whether the witness might refuse to testify on the ground that his answers might expose him to civil suit or pecuniary loss. The Chancellor arrived at the conclusion that a witness, neither nominally nor substantially a party to the suit, was not exempt from giving evidence, although the evidence might be used against him in a civil suit, unless the disclosure would subject him to some loss or disadvantage *in the nature of a penalty or forfeiture*. There is no consideration whatever of the question of what sort of penalty or forfeiture would operate as an excuse, and the use of the phrase "in the nature of a penalty or forfeiture" does not appear to be significant in view of the fact that this phrase "subject him to a penalty or forfeiture" and the phrase "something in the nature of a penalty or forfeiture" are used in the opinion interchangeably.

Livingston v. Harris, 3 Paige, 527, involved a construction of an amendment to the usury laws of the State of New York. Under the theretofore pre-

vailing practice on a bill of discovery brought by the debtor against the lender to compel disclosures relating to a usurious transaction it was held necessary for the complainant to pay or offer to pay the principal and legal interest into court. Otherwise, the disclosure would not be required. A statute had been passed reciting in substance that in such cases in the future it should not be necessary to pay or offer to pay the interest, and the question was whether the statute should be construed to dispense with the payment not only of interest but of the principal. The court held that it only dispensed with the offer to pay interest, and that the principal must still be paid or offered to be paid, before discovery would be compelled. The decision was affirmed in 11 Wendell, 330. The point decided, of course, has no bearing upon the question before this court.

Let us now consider the penalties and forfeitures which the appellants plead they will be subjected to if the witnesses are compelled to testify as required by the court below. Those are specifically pleaded in the answers, and it is pertinent here to remark that the witness is not the sole judge of whether the testimony will tend to criminate him or not.

Counselman v. Hitchcock, 142 U. S. 547;
Opinion of Chief Justice Marshall in *Burr's Trial*, 1 Burr's trial, 244;

Cockburn, Chief Justice, in *R. v. Boyes*, 1 B & S. 311;

Opinion of Justice Mitchell in *State v. Thaden*, 43 Minn. 253.

To be sure, if the question be of such a description that the answer to it may or may not criminate the witness, according to the purport of the answer, then of course, if the witness swears that it will tend to criminate him, it is conclusive; but, nevertheless, it is for the court to say, from all the circumstances of the case, whether the testimony will tend to criminate him or not. Chief Justice Marshall, in the case above cited, stated the rule as follows:

“When a question is propounded, it belongs to the court to consider and decide whether *any* direct answer to it can implicate the witness.” (See review of this decision, Wigmore on Evidence, Vol. 3, § 2271, p. 3140.)

It will not be necessary to consider all of the privileges pleaded by the various witnesses, as they are substantially identical, and have been heretofore classified in this argument. It will be sufficient to consider certain privileges pleaded by the witness Alexander and the General Paper Company. As to those privileges where it is claimed that the testi-

mony will tend to convict them of a crime and subject them to penalties and forfeitures under the federal laws, they have been sufficiently considered under that branch of our argument wherein we discuss the application of the Fifth Amendment to corporations and the protection of the immunity statute. It is urged that the Sherman act is a penal statute. This is not denied. The act provides for only two classes of fines, penalties or forfeitures. The first is a fine or imprisonment for violation of the act; and the second is a forfeiture of property in the course of transportation from one state to another, etc. This latter can only take place in a proceeding against the property seized, such as now provided, for the seizure and condemnation of property imported into the United States contrary to law. As to these two penalties and forfeitures, being the only punishments imposed by the Sherman act, we have seen that the corporation and the witness are thoroughly protected. Section 7 provides that any person who shall be injured in his business by reason of anything forbidden in the act may sue for damages therefor in any circuit court of the United States. With the exception of the provision for treble damages, this statute no more than expresses the rule of the common law. We take it at

common law any person could sue for damages, as such monopolies were invalid, and a recovery of treble damages as compensation to the person is not a penalty and forfeiture within the meaning of the Fifth Amendment.

Huntington v. Attril, 146 U. S. 657;

Brady v. Daly, 175 U. S. 148;

See also especially *City of Atlanta v. Chattanooga Foundry & Pipe Co.*, 101 Federal, 900, where the question involved was under this very section.

While it is not specifically pleaded, it is claimed, that the granting of an injunction as the result of this suit to restrain the continuance of the unlawful combination and conspiracy in restraint of trade is itself a subjection of the corporation and of the individual witness to a penalty and forfeiture, or something in the nature of a penalty or forfeiture, and to loss and damage contrary to the Fifth Amendment of the Constitution. It will not be claimed, of course, that an equitable suit to enjoin the continuance of a conspiracy is a criminal case. The witness Alexander and the General Paper Company each pleaded that the object of this suit is to enjoin the General Paper Company from carrying on the business for which it was incorporated and carry-

ing out certain contracts and agreements existing between the General Paper Company and each of the twenty-three constituent corporations. These contracts are identical in form (Record in Wis. cases, page 496, Exhibit 30), and in substance created the General Paper Company the exclusive selling agent of the corporations defendant for the period of five years, and provided that the corporation will not sell any of its own product during said time. It will be remembered that these contracts were a part and parcel of the original scheme for which the General Paper Company was organized. It is claimed that these contracts constitute a valuable property right, and that to enjoin the General Paper Company from carrying them out will subject it to injury, damage and loss in the nature of a forfeiture, and consequently that the constituent companies and the stockholders therein will be subjected to a like damage and loss. It may be mentioned here that Alexander is not a stockholder in the General Paper Company. (Stipulation, Record, p. 301.) He alleges in his answer that he is such a stockholder. The plea is specious, and one not borne out by the evidence. It was not claimed in the court below, and will not be here claimed, that he has any interest in the stock, but simply holds it for certain corporations in which he is a stockholder.

This action is brought solely for the purpose of enjoining the continuance of the unlawful combination. These contracts were entered into as a part and parcel of the conspiracy, and no person can obtain a property right in the continuance of an unlawful business void in its inception. If such could be claimed, then the result would be that the corporation would have a property right in the continuance of a contract for conspiracy, or as a part of the conspiracy, in violation of law, and would be protected in that property right by the Fourteenth Amendment to the Constitution, providing that property shall not be taken without due process of law. In other words, having no right to violate the law, but having done so, he obtains a vested right in such violation, protected by the Constitution of the United States. But it was urged that the contracts were valid in their inception, and will only be rendered invalid by a decision of this court enjoining the General Paper Company from carrying them out. The answer is, that if the contracts were valid in their inception, and if the conspiracy consists of other separate and distinct acts afterwards done, then a decision of this court will not affect them. In other words, if the contracts are valid, then the witnesses and the corporation can lose nothing by dis-

closing the facts in relation thereto; if invalid, they have no property right in them. We venture to say that it has never before been claimed in a court of justice that persons or corporations could obtain a right of property in a combination or merger of interests in violation of the federal statute, so that an injunction preventing the continuance of the combination or conspiracy would in itself be the infliction of a penalty or forfeiture prohibited by the Fifth Amendment. Such a position necessarily would perpetuate an unlawful conspiracy, monopoly or contract in restraint of trade. If such a principle can be invoked in defense of this action, what would have been the result in the *Northern Securities* case, where the two corporations did not simply create a general agent to do their business, but the stockholders sold and transferred their shares of stock to a holding company, which issued its stock to the extent of hundreds of millions of dollars, and sold it in the markets of the world to innocent purchasers? But it is urged that the General Paper Company has made various contracts, as appears by the record, with newspaper publishers and others, for the sale of the paper manufactured by the constituent mills, and that it has a property right in these contracts which will be destroyed by an in-

junction in this case. The answer to that proposition is simply, that a decree preventing the continuance of the combination in restraint of trade will not affect sales of property already made or contracts for sales entered into.

Connolly v. Sewer Pipe Co., 184 U. S. 540.

Let us see what will be the effect of granting an injunction in this case against the continuance of the monopoly or contract in restraint of trade, in other words, against the General Paper Company's continuing to act as the general sales agent for these defendant corporations under its organization. Under no proceeding provided for by the federal statutes or jurisprudence, can the charter of the General Paper Company or the charter of any of the defendant corporations, be forfeited. The powers of the General Paper Company as expressed in its articles, and the powers of the other corporations so expressed, are legal. The General Paper Company was organized to act as a selling agent,—a perfectly legal business,—and to the extent that it has not violated the federal statutes, its business is a legal and legitimate business not within the reach of Congress. The other corporations were incorporated to manufacture and sell paper; some of them for other purposes; and to

the extent that they have not entered into a combination, their business is legitimate and legal. The Anti-trust Act does not authorize the forfeiture of any of the property (except property in the course of transportation) nor the charters of any of the corporations. When this injunction is granted, the General Paper Company will own its assets, moneys, credits and contracts for the sale of paper, and the other corporations will own the stock, (if permitted by state laws) in that company. Their property will not be affected, except as its use may be affected by reason of the fact that they cannot continue the unlawful transaction entered into. But it is said that the business of the various corporations will be injured; that they will be discredited in the public eye. It is entirely true that in so far as this combination has enabled them to extort unreasonable prices from the public, their business will be affected and in so far as the exposure of this conspiracy will affect their business and discredit the stockholders connected with them, they will also be injured; but this is not a penalty and forfeiture within the meaning of the Fifth Amendment. It was held in *Brown v. Walker, supra*, that the fact that the witness might incur personal odium and disgrace by answering the questions, was not an excuse under the Consti-

tution. Is discredit and injury to one's business greater in the eyes of the law than the good name of the individual? Does mere financial injury and loss stand higher before the law, and demand greater protection, than the honor and reputation of the citizen? Each of these defendant corporations and each stockholder therein will, if this injunction be granted, own all the property it or he ever owned. The injunction will not take from them one dollar of property and forfeit it to the state. Its effect will simply be to put a stop to the continuance of that mode of business which the law condemns, and the injuries incident to this are the results of their own unlawful acts, and are not legitimate subjects for the protection of the Constitution. The court has a right, therefore, to say from the record in this case, that the witness and the corporation will not be subjected to any penalty or forfeiture contemplated by the Constitution.

If these positions are well taken, they dispose of the rights of the witnesses as stockholders in any of the corporations and of all of the pleas of the defendant corporations except the forfeitures and penalties which it is alleged may be incurred under the laws of Wisconsin and Minnesota; for if the corporation is not protected by the Fifth Amend-

ment, then the possibility of a loss to the stockholder in any of the defendant corporations by reason of the corporation being subjected to any loss or damage in the nature of a forfeiture is too remote.

Brown v. Walker, 161 U. S. 591.

State v. Standard Oil Co., 61 Nebr. 28; 84 N. W. 413.

State v. Jack, 69 Kans. 387; 76 Pac. Rep. 911.

No mere possibility of a liability or loss undefined is sufficient.

Brown v. Walker, 161 U. S. 608.

But, if possible loss as a stockholder in a corporation which may be hereafter fined or subjected to a penalty for the violation of a statute comes within the protection of the Fifth Amendment, then the amnesty statute is broad enough to cover it and protects both the stockholder and the corporation.

It is apparently not claimed, however, by the corporation or by the witnesses, that there can be any forfeiture under the statutes of the United States, and it is therefore alleged in substance that each of the defendant corporations (in some of which the witnesses are stockholders) may be subjected to the forfeiture of their charters, and to penalties, under the laws of the states of Wisconsin and Minnesota,

and consequently that both the corporations and the witnesses are entitled to refuse to answer.

For the purposes of this argument, we shall assume that the statutes of the respective states, or in the absence of a statute, that the general law, authorizes the state to take away the charter of a company, if it violates the laws of the state of its creation. But no state can punish a citizen or a corporation for any violation of the Interstate Commerce Act, as Congress has exclusive jurisdiction over the subject therein treated.

It is our claim that this court has settled the question that the immunity statute of Congress is broad enough to protect the witness against any prosecution for or on account of anything which he may disclose in response to the command of the federal court, whether under federal or state jurisdiction.

Brown v. Walker, 161 U. S. 606;

Interstate Commerce Commission v. Baird,
194 U. S. 25.

These decisions seem to us to be conclusive on this question. We ought therefore with propriety to refuse to argue it; but the earnest insistence of counsel for the appellants in the court below that

Brown v. Walker does not control this case, and that, if it does, the decision is wrong, leads us to a brief examination of the foundation of this principle.

We believe that either one of two propositions is a complete answer to the contention of the appellants; first, that the constitutional guaranties have reference only to offenses against the sovereignty which enacted them; second, if prosecutions under state laws may, for this purpose, be considered within the same sovereignty and therefor within the constitutional protection, then the immunity statute is broad enough to afford protection.

First. We start with the proposition that the Fifth Amendment is a limitation upon the federal authority and not upon that of the state.

Brown v. Walker, 161 U. S. 606 of opinion;
Barron v. Baltimore, 7 Peters, 243; 10 Curtis
464.

Fox v. Ohio, 5 Howard, 410.

Withers v. Buckley, 20 Howard, 84.

Twitchell v. Commonwealth, 7 Wallace, 321.

Presser v. Illinois, 116 U. S. 252.

It follows that the provision of the Fifth Amendment that no person shall be compelled, in a criminal case, to be a witness against himself, operates to protect the witness only when testifying pur-

suant to federal authority, and not when testifying pursuant to authority of the state. That is to say, a witness testifying in a criminal prosecution in a state court cannot invoke the protection of the federal constitution. From this it is a fair and natural deduction that a witness testifying in a proceeding in a federal court, cannot claim protection by reason of the fact that he may be subjected to prosecution by state authority. In other words, the federal constitution was designed to protect the witness against the oppressive methods of its own jurisdiction, and of no other. The boundaries of the constitution, and of the sovereignty which established it, are the same. Wigmore on Evidence, Vol. 3, Sec. 2258. The courts are not presumed to know the laws and customs of a foreign state, or to know the probabilities of danger to the witness from such a source. Again, our laws may not be in harmony with those of other governments. It cannot be that the constitution contemplated that a witness called and compelled to testify pursuant to federal authority, should be protected against the consequences of political crimes in Russia, or what would constitute *lese majeste* in Germany.

It has been held that this principle which has become a cardinal principle of the unwritten con-

stitution of England, does not protect the witness against prosecution by a foreign jurisdiction. Lord Cranworth, V. C. in *King of Sicilies v. Wilcox*, 7 State Tr. New Series, 1049, 1068. And it seems to us that the authorities we have cited have substantially applied the same principle as between the states and the federal government.

In *Fox v. State of Ohio*, 5 Howard, 432, this court held that the provision of the Fifth Amendment to the Constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, did not protect a person from punishment under state laws where the act committed was in violation of both state and federal laws. The defendant in that case was convicted for passing counterfeit money in violation of the statute of Ohio. From a judgment of conviction in the state court, a writ of error was taken to the Supreme Court of the United States. It was claimed for the plaintiff in error that the statute of Ohio was repugnant to the fifth and sixth clauses of the eighth section of the first article of the Constitution, which invest Congress with the power to coin money, regulate the value thereof and of foreign coin, and to provide for the punishment of counterfeiting current coin of the United States. The court held,

however, that there was a material distinction between the offense of counterfeiting coin and of passing base coin; that one was counterfeiting, and the other was a cheat or fraud punishable by the state laws. It was held, however, that (conceding for the purpose of the argument that Congress could undertake to punish a cheat perpetrated between citizens of a state because the instrument in effecting that cheat was a counterfeit coin of the United States) the fifth article of the Amendment to the Constitution was not designed as a limit upon the state government in reference to their own citizens, but simply as a limit upon the federal government to protect a defendant from being twice put in jeopardy under the federal laws, and that prosecution under the state laws for the same offense was not prohibited by this provision of the Constitution. The principle is the same as that in the case at bar. The provision here involved, that a person shall not be compelled in a criminal case to be a witness against himself, was not designed to protect the witness from prosecution by a separate government or sovereign power, and when Congress passed an immunity statute which would prevent prosecution under federal laws, the guaranty of the Constitution was fulfilled in the same manner as in the *Fox* case

the guaranty of the Constitution was held to be fulfilled by preventing a person from being twice put in jeopardy of life and limb by federal prosecution.

In the regulation of purely internal matters, the states are in effect separate sovereignties. Their laws are supreme and have no extra territorial effect. No state could grant immunity to its citizens for infringement of the laws of another state. Every principle which applies to separate nations applies with equal force to the states; and it has been held, in the only states where the question has been decided, that this provision of the state constitution does not protect a witness against giving testimony which may tend to convict him under federal laws or the laws of other states.

People v. Butler Street Foundry, 201 Ill., 248;

**State v. Jack*, 69 Kansas, 387, 76 Pacific, 911;

State v. March, 1 Jones Law, (N. C.) 526.

Second. But if a distinction may be made between prosecutions under state laws and prosecutions by separate governments, in other words, if the states are to be considered for this purpose within the same sovereignty so that state prosecutions may be said to fall within the contemplation of the Fifth Amend-

*The decision of this court, affirming this case, has been so recently made that it has been impossible for us to consider it in the brief.

ment, then it seems to follow that the immunity statute is broad enough to protect the witness against any prosecution, state or federal.

It was held by this court in *Brown v. Walker* that while the Fifth Amendment is a limitation only upon the power of Congress and does not apply to a witness testifying in a state court, still, the immunity statute is not restricted to prosecutions, penalties or forfeitures in federal courts, but is universal in its application, and prevents any prosecution, penalty or forfeiture in any proceeding under any authority on account of anything disclosed pursuant to the authority of the federal court. The 6th article of the Constitution provides:

“This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.”

While it will be seen, from authorities we cite, that the decisions of the state courts have followed this case, and have applied the same rule to wit-

nesses testifying under the immunity statute of the state, some question might be made as to whether a witness in the state court could plead such an immunity, for the authority of the state manifestly is not supreme over that of Congress. But it is not consistent with the exclusive federal control over interstate commerce that Congress should be impotent to provide a remedy for the violation of its laws, because forsooth, some state authority may attempt to punish a witness on account of something in relation to which he may testify. When the constitution conferred upon Congress the power to regulate commerce between the states, the power given was exclusive, and carried with it all the necessary powers to enforce those regulations, and to protect the citizen in obeying the regulations thus made. Its powers are not confine simply to regulating the commerce, but, pursuant to this power, Congress may perform all things necessary to make that regulation effective.

Gibbons v. Ogden, 9 Wheaton, 1;

Wabash Ry. Co. v. Illinois, 118 U. S. 557;

Kidd v. Pearson, 128 U. S. 1;

The Daniel Ball, 10 Wallace, 557;

Hall v. DeCuir, 95 U. S. 485;

Jacobson v. Massachusetts, 197 U. S. 25.

In *Gibbons v. Ogden*, 9 Wheaton, 1, Chief Justice Marshall settled for all time the supremacy of federal power over interstate commerce. He held that the power was plenary and exclusive of state control or interference; that when necessary to effectuate the regulations adopted by Congress, the exercise of the power does not stop at state lines, nor yield to the power of the state, even though exercised in the regulation of its purely internal affairs; that, while conceding to the states exclusive jurisdiction over its internal affairs,—such as municipal control, taxation, the control of purely internal commerce,—yet, whenever the state laws or regulations come into conflict with the exercise of any power committed to Congress necessary to the control of its commerce, the state regulations must necessarily yield. He said (Curtis Ed. p. 8. of opinion) :

“The genius and character of the whole Government seem to be that its action is to be applied to all the external concerns of the nation, and to those internal affairs which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere for the purpose of executing some of the general

powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself.

“But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power if it could not pass those lines.”

Again (page 16 of opinion):

“Since, however, in exercising the power of regulating their own purely internal affairs, whether of trading or police, the states may sometimes enact laws, the validity of which depends upon their interfering with and being contrary to an act of Congress passed in pursuance of the constitution, the court will enter upon the inquiry, whether the laws of New York, as expounded by the highest tribunal of that State, have, in their application to this case, come into collision with an act of Congress, and depriving a citizen of a right to which that act entitled him. Should this collision exist, it will be immaterial whether those laws were passed in virtue of a concurrent power ‘to regulate commerce with foreign nations and among the

several States,' or, in virtue of a power to regulate their domestic trade and police. In one case and the other the acts of New York must yield to the law of Congress; and the decision sustaining the privilege they confer, against a right given by a law of the Union, must be erroneous."

In the case of *Kidd v. Pearson*, *supra*, the court said (p. 18):

"Sacred, however, as these reserved powers are regarded, the court is particular to declare with emphasis the supreme and paramount authority of the Constitution and laws of the United States, relating to the regulation of commerce with foreign nations, and among the several States; and that whenever these reserved powers or any of them, are so exercised as to come in conflict with the free course of the powers vested in Congress, the law of the State must yield to the supremacy of the federal authority, though such law may have been enacted in the exercise of a power undelegated and indisputably reserved to the States."

This position is very clearly illustrated in a

later decision of this court, *Leisy v. Hardin*, 135 U. S. 100.

The proposition again received the approval of this court in the case of *Addyston Pipe & Steel Co. v. United States*, 175 U. S., page 227, of the opinion.

The statement of this principle by Chief Justice Marshall is sufficient to illustrate the point which we make; that the power to regulate commerce is exclusive in Congress; (and especially is this so when Congress has acted.) This power is not simply confined to the power to regulate, but it extends to all the incidents of commerce, and it necessarily includes the power to enact such legislation for the protection of the citizen as will make this regulation effective. The provision of the Fifth amendment protecting the witness against incriminating himself and providing "that he shall not be deprived of life, liberty or property without due process of law, nor shall his property be taken for public use without just compensation" must be construed in connection with the provision of the Constitution granting the Congress exclusive control over commerce; and so construed, Congress must have the power to enact such legislation consistent with the Fifth Amendment as will enable it to enforce the laws

regulating that commerce. If the premise is granted, as it must be, that the laws enacted by Congress pursuant to the Constitution are the supreme law of the land, and that "the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding," then the natural consequence of this position is that when Congress deems it necessary to grant to a citizen immunity in order that the avenue may be open to enforce a regulation of commerce, that immunity will protect him within the borders of the state and against any state action, or any action of the judges of the state, anything in the state laws or constitution to the contrary notwithstanding. Otherwise, all immunity laws are necessarily of no effect, for if Congress cannot pass an immunity law whose protecting shield reaches to the extent of the power of Congress under the commerce clause, it can practically pass no immunity law whatever, because no cases at this day arise under the Interstate Commerce Act or the Sherman Anti-Trust Act where the witness could not plead that the testimony *might* tend to convict him of a violation of some state law.

We do not mean by this that there is any real danger of state prosecution on account of these dis-

closures; but that, as nearly all of the states have statutes regulating intrastate commerce, and prohibiting monopolies and contracts in restraint thereof, and as these statutes are very largely modeled after the federal statutes, of course it is easy enough for the witness to make the plea.

The result is that the power of Congress must necessarily be supreme, and if either party must yield to the other, clearly the power of the state is subordinate to that of Congress. Unless the position we take is true, the immunity statute, which has been in existence and upheld by this court in several cases, is mere waste paper; Congress cannot enact one which is broader, and no immunity statute could be enacted except, possibly, with the concurrent action of the Congress and all the states. And we might suggest that this could not be done, because the power of the state to legislate in relation to the immunity of a witness called to testify as to an infraction of the interstate commerce laws, may well be questioned. The position we take is illustrated by a line of decisions in which this court has held that the federal authority is supreme in all matters necessary to effect a complete execution of the federal power conferred by the Constitution. To

illustrate: *In Ohio v. Thomas*, 173 U. S. 277, it was held that in feeding the inmates of a soldiers' home in Ohio in accordance with the legislation of Congress in that respect, the governor of the soldiers' home is engaged in the administration of a federal institution, and that state authorities have no constitutional power to interfere and prevent him from furnishing articles of food, although under the police law of the state those articles do not comply with the regulations thus prescribed by the state authority. This case arose under the oleomargarine law of Ohio.

In *Tennessee v. Davis*, 100 U. S. 263, a revenue officer was indicted for murder, in the state court of Tennessee. He claimed that what he was doing was in the pursuance of his duty as Deputy Collector of Internal Revenue and in self defense. The case was removed to the federal court. Passing upon this question, Mr. Justice Strong said:

"We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the states and upon the people of the states. While it is limited

in the number of its powers, so far as its sovereignty extends it is supreme. No state government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it for a moment the cognizance of any subject which that instrument has committed to it."

A like holding was made in the case of *Ex Parte Siebold*, 100 U. S. 371, in which the court held that, in the enforcement of the regulations for the election of representatives, the power of Congress is supreme.

A noted case on this subject is the case of *In Re Neagle*, 135 U. S. 1, in which it was held that an assault upon a judge of the United States Court, in the discharge of his duties, was a breach of the peace of the United States, as distinguished from the peace of the state; that it was the duty of the marshall to do whatever might be necessary to protect the judge, even to the taking of human life, and that the power of the federal courts to protect the dignity of the court and the person of the judge could not be limited by state authority.

These illustrations of course are familiar to the

court, and scarcely need the discussion of counsel, but they apply with irresistible force to the principles we invoke.

Again, we take it to be the law that no state has power to revoke the charter of a state corporation, or to punish one of its citizens, for an infraction of the federal law. *Tennessee v. Davis, supra.*

In *Re Loney*, 134, U. S. 375, the court held that no state could, under its statutes, punish a witness for perjury who was giving his testimony pursuant to the constitution and laws of the United States, in a case pending in the federal court or other federal tribunal, whether he testified in the presence of that tribunal or before a magistrate, either of the nation or of the state. It is manifest, of course, that power to punish an infraction of the Interstate Commerce Law or the Sherman Act is exclusively in Congress and in tribunals upon which Congress confers the power.

In the court below, counsel cited a long line of decisions showing that over purely intrastate commerce, Congress has no power. No one for a moment questions this proposition, that, in the matter of the regulation of those purely internal affairs, the power of the state is supreme; but whenever the

power of the state, even in the regulation of internal matters, conflicts with the power of Congress in the regulation of interstate matters, the power of Congress is supreme.

The language of Mr. Justice Harlan, in the very late case of *Jacobson v. Massachusetts*, 197 U. S. 25, clearly expresses the view we desire to impress upon the court:

“A local enactment or regulation, even if based on the acknowledged police powers of a state, must always yield in case of conflict with the exercise by the general government of any power it possesses under the constitution or with any right which that instrument gives or secures.”

We admit that the proposition, when stated in the bald form that the states have power to punish infractions of the laws in relation to their purely internal affairs, appeals to us with particular force, and at first blush seems to imply that this power is not subject to any superior restraint. It is not subject to any direct superior legislative or judicial restraint, except where, in the exercise of the exclusive and undoubted powers of the federal government, it becomes necessary, by reason of conflict of

authority, that there should be one supreme power. And, when this becomes necessary, there are no limitations to the power of Congress, except those limitations for the protection of property and the rights of a citizen guaranteed by the constitution of the United States or by the unwritten law of the land.

By granting a witness immunity against a state law, or state prosecution, Congress is not legislating in relation to purely internal state matters that are beyond its constitutional power. There is a vast difference between Congress legislating upon the purely internal affairs of the state, and Congress legislating upon matters committed to it by the constitution, purely federal in their nature, in such a manner as to come into conflict with the laws and regulations of the state. While Congress could not have power to pass a bill directly regulating the purely internal matters of a state, it has power to legislate upon matters committed to it by the constitution, although its legislation may nullify state laws regulating purely internal affairs. Each power as conferred is exclusive in its own sphere, except, as we have seen, where they conflict; and, when they conflict, the power of Congress must be held to be supreme. Any other construction would materially cripple the power of Congress, in fact, would de-

prive it of the power to enforce regulations of interstate commerce. Under our dual system of government, it is absolutely necessary that, in cases of conflict, one should be supreme. And it seems to us, if it is necessary, in the enforcement of the laws regulating commerce, to grant immunity to a witness, that immunity must cover all territory over which the laws of Congress are supreme.

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APPENDIX.

CLASSIFICATION OF REFUSALS.

With references to the schedule of refusals and the transcript of record.

I.

RECORD BOOK OF THE GENERAL PAPER COMPANY.

Refusals to read any part of page 70 of the record-book, especially that part showing the election of W. Z. Stuart as second vice-president of the General Paper Company.

Also, refusal to submit the record-book (Exhibit 29) to the inspection of counsel for the Government, regarding the meeting of December 8, 1903, other than that part reciting the election of Stuart as second vice-president.

Alexander's refusal No. 1, fourth question on page 147;

Alexander's refusal No. 2, seventh question on page 147;

Alexander's refusal No. 3, third question on page 148, of the transcript of record in the Alexander appeal.

Refusal to allow an inspection of the record of the meeting of the stockholders held December 8, 1903.

Alexander's refusal No. 4, fifth question on page 149;

Alexander's refusal No. 5, first question on page 150;

Alexander's refusal No. 6, request near middle of page 150, of the transcript of record in the Alexander appeal.

Refusal to read minutes of the directors meeting held June 18, 1900, at which the roll was called as to those who would "go on," enter into contracts with the General Paper Company, take stock, and continue the business of the General Paper Company.

Alexander's refusal No. 7, ninth and eleventh questions on page 171 of the transcript of record in the Alexander appeal.

Refusal to permit all of the record of the meeting of the stockholders held in December, 1900 (the first annual meeting after the organization of the General Paper Company), to be entered on the record, although the record of said meeting is kept in petitioner's exhibit 29, was initialed by the examiner, and although the witness admitted, when testifying to the list of directors elected at said meeting, that he had skipped two pages of the minutes of said meeting. Witness testified that the pages

skipped relate only to routine business, but did not state what the business was, and counsel for the Government was refused the privilege of inspecting the book to check up the statement of the witness.

Alexander's refusal No. 8, at the bottom of page 183;

Alexander's refusal No. 9, eighth question on page 186;

Alexander's refusal No. 10, second question on page 187;

Alexander's refusal No. 11, following sixth question on page 187;

Alexander's refusal No. 12, seventh question on page 187;

Alexander's refusal No. 13, last question on page 187;

Alexander's refusal No. 14, near the middle of page 189;

Alexander's refusal No. 15, last question on page 189, of the transcript of record in the Alexander appeal.

Refusal to permit the examiner to initial, for identification, pages 42 to 45 of Exhibit 29, being the annual meeting of the stockholders held December 10, 1901. Also, refusal to allow counsel for the Government to inspect said minutes, for the purpose of verifying the statement of the witness as to what they contained. Also, refusal to read the pages of said minutes that were skipped by the witness.

Alexander's refusal No. 16, near the middle of page 199;

Alexander's refusal No. 17, near the top of page 217;

Alexander's refusal No. 18, third question on page 201;

Alexander's refusal No. 19, last question on page 201, of the transcript of record in the Alexander appeal.

Refusal to read the whole of the report of the committee appointed at the meeting held December 10, 1901, to consider and report upon the matter of division of and payment for stock of the General Paper Company. Witness had read a portion of the report, but refused to read the balance.

Alexander's refusal No. 20, fifth question on page 206 of the transcript of record in the Alexander appeal.

Witness had been reading from the record, on the stand, counsel for the defendants had taken the book from the possession of the witness and refused to permit him to read further from it. The witness had been served with a *subpoena duces tecum*, as secretary of the General Paper Company, to produce the book. Witness refused to answer why he permitted the record book to go out of his possession when he was the custodian of it.

Alexander's refusal No. 21, last question on page 206 of the transcript of record in the Alexander appeal.

Under the advice of counsel for the defendants, witness refused to answer to the best of his recollection as to the balance of the report of the committee appointed at the meeting held December 10, 1901, which he had refused to read.

Alexander's refusal No. 22, fifth question on page 211 of the transcript of record in the Alexander appeal.

Witness had stated that he could find nothing further in the record-book concerning the report above adverted to, and counsel for the Government then asked for the privilege of inspecting the record for the purpose of determining the accuracy of the witness' statement. Counsel for the defendants had the book in his possession and refused to allow such inspection.

Alexander's refusal No. 24, request at the bottom of page 213, and first question on page 214;

Alexander's refusal No. 25, second question on page 214, of the transcript of record in the Alexander appeal.

Refusal to inspect exhibit 29 for the purpose of ascertaining whether the minutes of the stockholders' meeting held December 8, 1903, in any way relate to any other corporation defendant making the General Paper Company its sales agent, or making a contract therefor. Counsel for the defendants would not permit the witness to testify, nor permit

the witness to inspect the book.

Alexander's refusal No. 35, last two questions on page 273 of the transcript of record in the Alexander appeal.

Refusal to state whether or not the balance of the record of the meeting of the stockholders held December 8, 1903, not read by the witness, had any relation to the business between the General Paper Company and the other defendant corporations making a contract to make it its exclusive selling agent.

Alexander's refusal No. 38, third question on page 275 of the transcript of record in the Alexander appeal.

Refusal to testify from the record as to the contents of the record of the stockholders meeting held December 13, 1904. Counsel for the defendants had possession of the record-book, stating that he would not permit the witness to regain its possession for the purpose of testifying and that if counsel for the Government wanted the information he would have to get it from him and not from the witness.

Alexander's refusal No. 39, fifth question on page 275 of the transcript of record in the Alexander appeal.

Refusal to give the number and dates of meeting of the directors of the General Paper Company held during the year 1900. Also, refusal to produce

the minutes of the meetings of the board of directors during 1900, although they were offered in evidence by counsel for the Government.

Alexander's refusal No. 40, fifth question on page 288;

Alexander's refusal No. 41, seventh question on page 288;

Alexander's refusal No. 42, last question on page 288;

Alexander's refusal No. 43, first, second, third and fourth questions on page 289 of the transcript of record in the Alexander appeal.

Refusal to state what the records referred to which he refused to produce.

Alexander's refusal No. 44, second question on page 290 of the transcript of record in the Alexander appeal.

Refusal to state whether there was a meeting of the board of directors of the General Paper Company in January, 1902.

Alexander's refusal No. 77, seventh question on page 298 of the transcript of record in the Alexander appeal.

II.

MINUTES OF MEETINGS OF THE EXECUTIVE COMMITTEE.

Counsel for the defendants, on behalf of the witness, refused to produce the minutes of the meeting

of the executive committee of the General Paper Company, and refused to allow the witness to state whether he is the custodian of such records, as secretary of the company, although the witness had previously testified that when he is present he keeps such minutes. Also, refusal to let him state whether he had them in his possession; and when they left his possession.

Alexander's refusal No. 80, last question on page 299;

Alexander's refusal No. 81, first question on page 300;

Alexander's refusal No. 82, third question on page 300;

Alexander's refusal No. 83, fourth question on page 300;

Alexander's refusal No. 84, sixth question on page 300, of the transcript of record in the Alexander appeal.

III.

TREASURER'S REPORTS.

Refusal to state the contents of the treasurer's report, or identify it in any way, or state whether it contained the results of all sales of paper made by the General Paper Company. Also, refusal to state whether the witness, as treasurer of the General

Paper Company, reports the total value of sales each year.

Alexander's refusal No. 36, eighth question on page 274;

Alexander's refusal No. 37, last question on page 274;

Alexander's refusal No. 63, fourth question on page 296, of the transcript of record in the Alexander appeal.

After stating that he had been present when the treasurer's reports to the board of directors were produced, and that he had examined them in a general way to know what they contain, witness refused to state whether they show the profits of the General Paper Company.

Nelson's refusal No. 30, fifth question on page 121 of the transcript of record in the Nelson case.

After stating that he had seen the treasurer's reports, that copies of them had been distributed to him, and that they were distributed every year, witness refused to state whether he had any copies of the reports, or to answer whether or not he would produce them for inspection by counsel for the Government and use in evidence.

McNair's refusal No. 34, sixth question on page 145;

McNair's refusal No. 36, eighth question on page 145; of the transcript of record in the Nelson case.

Refusal to state whether the treasurer's reports show the gross and net earnings of the General Paper Company, or the total sum distributed to the defendant mills by the General Paper Company either as dividends, earnings or surplus of any kind.

McNair's refusal No. 35, seventh question on page 145;

McNair's refusal No. 37, last question on page 145, of the transcript of record in the Nelson case.

IV.

SALES, AND REPORTS OF THE MANAGER OF SALES.

Refusal of witness to state the total sales each year in value of the General Paper Company.

Alexander's refusal No. 61, second question on page 296;

Alexander's refusal No. 62, third question on page 296; of the transcript of record in the Alexander appeal.

Refusal to state whether the General Paper Company has any books showing the total sales.

Alexander's refusal No. 64, fifth question on page 296 of the transcript of record in the Alexander appeal.

Refusal to state whether the said sales amount to ten million dollars annually.

Alexander's refusal No. 65, sixth question on page 296 of the transcript of record in the Alexander appeal.

Refusal to state whether or not his books show that the sales agent made a report to the board of directors or stockholders each year, or that the minutes of the annual meetings show it.

Alexander's refusal No. 70, third question on page 297;

Alexander's refusal No. 71, fifth question on page 297, of the transcript of record in the Alexander appeal.

Refusal to testify as to whether the minutes of the meetings of the board of directors for the years 1900 to 1904 show any record of the reports of the sales agent showing the amount of sales.

Alexander's refusal No. 72, seventh question on page 297;

Alexander's refusal No. 73, eighth question on page 297;

Alexander's refusal No. 74, tenth question on page 297;

Alexander's refusal No. 75, first question on page 298;

Alexander's refusal No. 76, third question on page 298, of the transcript of record in the Alexander appeal.

Refusal to testify as to the quantity or value of paper sold by the General Paper Company, manufactured under contracts with the various mills, in evidence, it being conceded that the witness was the

sales manager of the General Paper Company during the period embraced in the questions.

Stuart's refusal No. 1, last question on page 361;

Stuart's refusal No. 2, first question on page 362;

Stuart's refusal No. 3, second question on page 362;

Stuart's refusal No. 4, fourth question on page 362;

Stuart's refusal No. 5, fifth question on page 362;

Stuart's refusal No. 6, sixth question on page 362;

Stuart's refusal No. 7, seventh question on page 362;

Stuart's refusal No. 8, eighth question on page 362;

Stuart's refusal No. 9, first question on page 363, of the transcript of record in the Alexander appeal.

Refusal to testify as to whether the report of the sales agent shows the prices which the General Paper Company paid to the mills for paper sold.

Nelson's refusal No. 28, sixth question on page 119;

McNair's refusal No. 33, second question on page 145, of the transcript of record in the Nelson case.

Refusal to state whether the reports of the sales agent show the basis of equalization of prices between the defendant companies.

Nelson's refusal No. 29, first question on page 121 of the transcript of record in the Nelson case.

Refusal to state whether the witness was ever present when the report of the sales agent was produced.

McNair's refusal No. 32, sixth question on page 144 of the transcript of record in the Nelson case.

V.

CONTRACTS WITH PUBLISHERS.

Refusal to answer whether the contracts with publishers are usually on a printed blank.

Alexander's refusal No. 57, first question on page 295 of the transcript of record in the Alexander appeal.

Refusal to produce the contracts with the various publishers for the sale of news print paper.

Alexander's refusal No. 58, page 294 of the transcript of record in the Alexander appeal.

Refusal to state where the form of contracts used between the General Paper Company and publishers was procured, or whether same was procured from the International Paper Company.

Alexander's refusal No. 59, fifth question on page 295 of the transcript of record in the Alexander appeal.

VI.

BUTCHER'S FIBER.

Refusals to testify concerning a pool in butcher's fiber.

Alexander's refusal No. 45, tenth question on page 290;

Alexander's refusal No. 46, twelfth question on page 290;

Alexander's refusal No. 47; first question on page 291;

Alexander's refusal No. 48, tenth question on page 291;

Alexander's refusal No. 49, twelfth question on page 291;

Alexander's refusal No. 50, first question on page 292;

Alexander's refusal No. 51, second question on page 292;

Alexander's refusal No. 52, fourth question on page 292;

Alexander's refusal No. 53, sixth question on page 292;

Alexander's refusal No. 54, eighth question on page 292;

Alexander's refusal No. 55, last question on page 292;

Alexander's refusal No. 56, fourth question on page 293, of the transcript of record in the Alexander appeal.

Refusal to answer as to whether he ever knew of a pool in butcher's fiber.

Whiting's refusal No. 16, last question on page 333;

Whiting's refusal No. 17, eighth question on page 334;

Whiting's refusal No. 18, ninth question on page 334, of the transcript of record in the Alexander appeal.

Refusal to state whether the witness ever heard of E. A. Edmonds' acting as a clearing agent, or pool agent, to equalize the prices of butcher's fibre among the defendant mills; or whether he has ever known of Mr. Edmonds' performing any other function or duty in connection with the business of the General Paper Company than that of director and member of the executive committee.

Nelson's refusal No. 1, eleventh question on page 114;

Nelson's refusal No. 2, last question on page 114;

McNair's refusal No. 2, fourteenth question on page 138;

McNair's refusal No. 3, fifteenth question on page 138 of the transcript of record in the Nelson case.

Refusal to state whether the witness knows whether the prices received by the mills have been equalized, as to butcher's fiber;

Or to state whether there has been in existence, during the time the General Paper Company has been the exclusive selling agent of these mills, an arrangement whereby the prices received by the de-

defendant mills for butcher's fiber have been equalized as between the mills.

Nelson's refusal No. 3, second question on page 115;

Nelson's refusal No. 4, fourth question on page 115;

McNair's refusal No. 9, fifth question on page 139, of the transcript of record in the Nelson case.

Refusal to state whether the executive committee fixed the price to be received by all the defendant companies manufacturing butcher's fiber;

Or whether the witness discussed the subject of equalizing the prices on butcher's fiber, at any of the meetings he attended.

McNair's refusal No. 7, third question on page 139;

McNair's refusal No. 8, fourth question on page 139, of the transcript of record in the Nelson case.

Refusal to state whether any of the defendant companies not manufacturing butcher's fiber, have compensated, through the General Paper Company, those mills manufacturing butcher's fiber for making that class of paper because it was less profitable to manufacture than other classes of paper;

Or whether the witness knew if any of the defendant companies manufacturing butcher's fiber have been so compensated;

Or whether his company ever made any payments to any of the mills making butcher's fiber, or

made any payments through the General Paper Company to any of the mills making butcher's fiber since the General Paper Company has been the exclusive selling agent of his company;

Or whether the witness' company made any payments, directly or indirectly, to E. A. Edmonds, as pool agent, to be divided up among the mills making butcher's fiber;

Or whether his company received any statements, through any officer or agent of the General Paper Company, showing or purporting to show the amount to be paid by the witness' company to compensate other defendant companies for making butcher's fiber.

Nelson's refusal No. 5, sixth question on page 115;

Nelson's refusal No. 6, seventh question on page 115;

Nelson's refusal No. 7, last question on page 115;

Nelson's refusal No. 8, first question on page 116;

McNair's refusal No. 4, last question on page 138;

McNair's refusal No. 5, first question on page 139;

McNair's refusal No. 6, second question on page 139, of the transcript of record in the Nelson case.

VII.

DIVIDENDS, COMMISSIONS, EXPENSES
AND PROFITS.

Refusal to testify as to the dividends that have been paid by the General Paper Company.

Alexander's refusal No. 66, eighth question on page 296;

Alexander's refusal No. 67, tenth question on page 296, of the transcript of record in the Alexander appeal.

Refusal to testify as to whether it is his duty to pay the dividends that may be declared by the General Paper Company.

Alexander's refusal No. 68, twelfth question on page 296 of the transcript of record in the Alexander appeal.

Refusal to testify as to whether his books show the dividends paid by the General Paper Company.

Alexander's refusal No. 69, first question on page 297 of the transcript of record in the Alexander appeal.

Refusal to state whether he knows the amount of dividends paid by the General Paper Company, or to state what such dividends were.

Stuart's refusal No. 10, second question on page 363;

Stuart's refusal No. 11, third question on page 363, of the transcript of record in the Alexander appeal.

Refusal to state whether he knows the gross amount of commissions received by the General Paper Company. Also, refusal to state what such commissions amounted to, and whether his books show what such commissions were, together with the expenses of conducting the business and the net profits.

Stuart's refusal No. 12, fourth question on page 363;

Stuart's refusal No. 13, fifth question on page 363;

Stuart's refusal No. 14, sixth question on page 363;

Stuart's refusal No. 15, seventh question on page 363, of the transcript of record in the Alexander appeal.

Refusal to state what dividends, if any, the witness or his company has received on his or its stock of the General Paper Company;

Or whether the witness or his company has ever received any dividends on said stock.

Nelson's refusal No. 26, second question on page 119;

Nelson's refusal No. 27, fourth question on page 119;

Bossard's refusal No. 13, first question on page 132;

Bossard's refusal No. 14, third question on page 132;

McNair's refusal No. 28, first question on page 144;

McNair's refusal No. 29, second question on page 144, of the transcript of record in the Nelson case.

VIII.

MANUFACTURERS PAPER COMPANY.

Refusal to testify as to whether, at a meeting with J. C. Brocklebank in Chicago, the proposition was discussed of making the Manufacturers Paper Company the sales agent for all or a portion of the defendants.

Alexander's refusal No. 29, eleventh question on page 247;

Alexander's refusal No. 30, thirteenth question on page 247;

Alexander's refusal No. 31, last question on page 247;

Alexander's refusal No. 32, second question on page 248;

Alexander's refusal No. 33, fourth question on page 248, of the transcript of record in the Alexander appeal.

Refusal to answer whether he attended a meeting in Chicago, in March, 1900, at which plans were discussed for procuring the Manufacturers Paper Company to act as exclusive sales agent for these

defendants or some of them, and at which plans were afterwards discussed of organizing the General Paper Company.

Alexander's refusal No. 34,, first question on page 249 of the transcript of record in the Alexander appeal.

Refusal to state whether the records of the General Paper Company show that at any meeting of the board of directors held in January, 1902, or at any time, the question was discussed of making any arrangement with the Manufacturers Paper Company.

Alexander's refusal No. 78, ninth question on page 298;

Alexander's refusal No. 79, last question on page 298; of the transcript of record in the Alexander appeal.

Refusal to state whether he was present at any meeting in Chicago when the subject was discussed of making the Manufacturers Paper Company the selling agent of these defendants or any of them.

Whiting's refusal No. 1, tenth question on page 307 of the transcript of record in the Alexander appeal.

Refusal to state whether he has ever had any business with Mr. J. C. Brocklebank.

Whiting's refusal No. 2, ninth question on page 308 of the transcript of record in the Alexander appeal.

IX.

INTERNATIONAL PAPER COMPANY.

Refusal to state whether, after the organization of the General Paper Company, he had any conversation with any officer of the International Paper Company about keeping out of the territory west of Chicago.

Whiting's refusal No. 26, third question on page 345 of the transcript of record in the Alexander appeal.

X.

INTERVIEW WITH REPORTER OF PAPER
TRADE JOURNAL.

Refusal to state whether he gave out a statement to a reporter of the "Paper Trade Journal," at Appleton, Wisconsin, on June 18, 1900, either during or after the meeting of the board of directors of the General Paper Company.

Alexander's refusal No. 26, last question on page 236;

Alexander's refusal No. 27, fourth question on page 237;

Alexander's refusal No. 28, second question on page 238, of the transcript of record in the Alexander appeal.

XI.

PRELIMINARY AGREEMENTS AND UNDERSTANDINGS.

Refusal to state whether an agreement was arrived at for the organization of a selling company before the completion of the organization of the General Paper Company.

Whiting's refusal No. 3, second question on page 310 of the transcript of record in the Alexander appeal.

Refusal to state whether he had any idea, prior to May 26, 1900, as to what proportion of the stock of the General Paper Company his company would receive. Also, refusal to state whether, prior to the time he subscribed to the stock for his mill, he had any understanding with the other gentlemen who went into this organization as to the amount of stock each would receive.

Whiting's refusal No. 4, last question on page 315;

Whiting's refusal No. 5, sixth question on page 316, of the transcript of record in the Alexander appeal.

Refusal to state whether or not he knew the plan on which the General Paper Company was organized, or the basis of division of the stock.

Whiting's refusal No. 21, tenth and eleventh questions on page 336;

Whiting's refusal No. 22, thirteenth question on page 336, of the transcript of record in the Alexander appeal.

Refusal to state whether he has any recollection of any meeting prior to May 26, 1900, at which a form of contract was agreed upon or adopted.

Whiting's refusal No. 23, first question on page 337;

Whiting's refusal No. 24, second question on page 337;

Whiting's refusal No. 25, sixth question on page 337; of the transcript of record in the Alexander appeal.

Refusal to state whether or not, during a talk between the different manufacturers of paper in Minnesota and Wisconsin, in the winter of 1900, the question was discussed of organizing a corporation for the purpose, among other things, of eliminating competition between the mills;

Or whether he had any talk with any of the gentlemen who represent these defendant mills, in the spring of 1900, about organizing a corporation to act as the general selling agent, in order to eliminate competition.

Nelson's refusal No. 34, sixth question on page 123;

Nelson's refusal No. 35, last question on page 123, of the transcript of record in the Nelson case.

XII.

NEGOTIATIONS BETWEEN OFFICERS OF THE GENERAL PAPER COMPANY AND BOSSARD AND McNAIR.

Refusal to state whether he ever had any talk with A. C. Bossard, of the Itasca Paper Company, with reference to making the General Paper Company the selling agent of his company.

Whiting's refusal No. 6, second question on page 327;

Whiting's refusal No. 7, fourth question on page 327, of the transcript of record in the Alexander appeal.

Refusal to state whether C. I. McNair, representing the Northwest Paper Company, refused to go into the General Paper Company when he saw him at Appleton.

Whiting's refusal No. 8, eighth question on page 328 of the transcript of record in the Alexander appeal.

Refusal to state the conversation he had with

Mr. McNair in Chicago, either at the office of the General Paper Company or at some hotel, about joining the General Paper Company.

Whiting's refusal No. 9, sixth question on page 329;

Whiting's refusal No. 10, last question on page 329, of the transcript of record in the Alexander appeal.

Refusal to state how he knew that Mr. McNair had concluded to go into the General Paper Company.

Whiting's refusal No. 11, fourth question on page 330 of the transcript of record in the Alexander appeal.

Refusal to state whether he had any conversation with Mr. McNair about joining the General Paper Company.

Whiting's refusal No. 12, thirteenth question on page 330;

Whiting's refusal No. 13, fourteenth question on page 330;

Whiting's refusal No. 14, last question on page 330;

Whiting's refusal No. 15, first question on page 331, of the transcript of record in the Alexander appeal.

Refusal to state whether or not, during the spring of 1900, George A. Whiting had several times asked the witness to have his company join the combination and make the General Paper Company

its exclusive selling agent, and that he had declined to do so until the spring of 1902.

McNair's refusal No. 38, eighth question on page 149;

McNair's refusal No. 39, last question on page 149;

McNair's refusal No. 40, second question on page 150 of the transcript of record in the Nelson case.

Refusal to state whether or not any threats were made against the witness or his company, to induce him or it to make the General Paper Company its exclusive selling agent;

Or to state whether officers of the General Paper Company, in the spring of 1902, had threatened to undersell him and ruin the business of his company, if he didn't make the General Paper Company the exclusive selling agent of his company;

Or to state whether or not they undertook to underbid the witness and run him out of St. Paul and Minneapolis contracts, in 1901.

McNair's refusal No. 41, third question on page 150;

McNair's refusal No. 42, fourth question on page 150;

McNair's refusal No. 43, fifth question on page 150 of the transcript of record in the Nelson case.

Refusal to state whether the witness exacted any promise from the officers of the General Paper Company, at the time that company was made the exclu-

sive selling agent of his company, to protect his customers against exorbitant prices.

McNair's refusal No. 44, sixth question on page 150 of the transcript of record in the Nelson case.

Refusal to state whether he had any agreement or understanding with the officers of the General Paper Company, prior to the time the witness' company made the General Paper Company its exclusive selling agent, that they would keep out of Duluth and not bid for the contracts of the Tribune and Herald.

McNair's refusal No. 45, last question on page 150 of the transcript of record in the Nelson case.

Refusal to state whether he had any conversations with Conde Hamlin of the St. Paul Pioneer Press, A. C. Weiss, of the Duluth Herald, and Milie Bunnell, of the Duluth News-Tribune, or either of them, during the years 1900, 1901 and 1902 (before making the General Paper Company the exclusive selling agent of his company) about going into the combination;

Or whether, at about the time he was negotiating with the General Paper Company to make it the exclusive selling agent of his company, he had a conversation with either Mr. Hamlin, Mr. Weiss or Mr. Bunnell on that subject;

Or whether he had a conversation with Mr. Bun-

nell immediately after he had made the contract with the General Paper Company.

McNair's refusal No. 46, fourth question on page 151;

McNair's refusal No. 47, fifth question on page 151;

McNair's refusal No. 48, sixth question on page 151 of the transcript of record in the Nelson case.

Refusal to state whether the officers of the General Paper Company brought pressure to bear upon his company to go into the combination in 1901, or to keep the prices up, if his company stayed out.

McNair's refusal No. 49, seventh question on page 151 of the transcript of record in the Nelson case.

XIII.

PETOSKEY FIBRE PAPER COMPANY.

Refusal to state whether he heard a discussion as to the Petoskey Fibre Paper Company renewing its contract with the General Paper Company.

Whiting's refusal No. 19, fifth question on page 335 of the transcript of record in the Alexander appeal.

Refusal to state whether there was a discussion at a meeting of the stockholders held December 13, 1904, regarding the dropping of Mr. Cheeseman

from the board of directors of the General Paper Company because the Petoskey Fibre Paper Company had refused to renew its contract with the General Paper Company.

Whiting's refusal No. 20, seventh question on page 335 of the transcript of record in the Alexander appeal.

XIV.

PRODUCT OF MILLS.

Refusal of witness to state what the principal products of the defendant mills are, whether news print or other classes of paper.

Alexander's refusal No. 60, last question on page 295 of the transcript of record in the Alexander appeal.

XV.

PRICES, AND EQUALIZATION THEREOF.

Refusal to answer as to whether the General Paper Company keeps books showing the prices at which paper was sold by the General Paper Company, and the prices received by each of the other

defendant companies for the paper manufactured by them and sold to or through the General Paper Company.

Stuart's refusal No. 16, last question on page 363 of the transcript of record in the Alexander appeal.

Refusal to state what basis of price the General Paper Company makes to his company for the product of its mill.

Bossard's refusal No. 1, tenth question on page 129 of the transcript of record in the Nelson case.

Refusal to state what basis, if any, has been used for the sale of the product of his mill.

McNair's refusal No. 10, second question on page 140 of the transcript of record in the Nelson case.

Refusal to state whether the board of directors, the executive committee, or the stockholders, have, at any time the witnesses have been directors of the General Paper Company, or during any meeting at which the witnesses respectively were present, fixed the price of any grade of paper to be paid by the General Paper Company to the defendant company manufacturing such paper.

Nelson's refusal No. 31, seventh question on page 121;

Bossard's refusal No. 8, third question on page 131;

Bossard's refusal No. 9, fifth question on page 131;

McNair's refusal No. 18, seventh question on page 141 of the transcript of record in the Nelson case.

Refusal to state whether the board of directors, the executive committee, or the stockholders, have, at any time since the organization of the General Paper Company, fixed the price or prices at which the General Paper Company should sell any grade of paper, in any community, or fix a minimum price.

Nelson's refusal No. 32, last question on page 121;

Bossard's refusal No. 10, sixth question on page 131;

McNair's refusal No. 19, eighth question on page 141 of the transcript of record in the Nelson case.

Refusal to state whether he discussed those prices, or fixed any price of paper to be sold for the defendant companies by the General Paper Company, as director, stockholder, or member of the executive committee.

Nelson's refusal No. 33, first question on page 122 of the transcript of record in the Nelson case.

Refusal to state whether, in lieu of dividends, all sums over and above a fixed price were not distributed by the General Paper Company among the defendant manufacturing companies, after deducting the expenses of management of the General Paper Company.

Bossard's refusal No. 15, fourth question on page 132 of the transcript of record in the Nelson case.

Hanging Paper.

Refusals to answer questions in any manner bearing upon an arrangement or understanding between the General Paper Company and the Grand Rapids Pulp & Paper Company, whereby the latter company received or was credited with a fixed price for hanging paper, and subsequently received additional credit for its proportion of the amount over and above that fixed price which the General Paper Company might receive for hanging paper;

Or, whether the books of the Grand Rapids Pulp & Paper Company show that the hanging paper manufactured by it was sold to or through the General Paper Company, and upon what basis;

Or, whether there was any arrangement or understanding among the mills manufacturing hanging paper, or among those mills and the General Paper Company, whereby the prices each mill should receive for hanging paper were equalized.

Same, as to each of the above questions, with respect to news print paper.

(The following page references are to the transcript of record in the Harmon appeal.)

Harmon's refusal No. 1, sixth question on page 150;

Harmon's refusal No. 2, second question on page 152;

Harmon's refusal No. 3, fourth question on page 152;

Harmon's refusal No. 4, sixth question on page 152;

Harmon's refusal No. 5, seventh question on page 152;

Harmon's refusal No. 6, last question on page 152;

Harmon's refusal No. 7, second question on page 153;

Harmon's refusal No. 8, third question on page 153;

Harmon's refusal No. 9, fourth question on page 153;

Harmon's refusal No. 10, fifth question on page 153;

Harmon's refusal No. 11, sixth question on page 153;

Harmon's refusal No. 12, seventh question on page 153;

Harmon's refusal No. 13, last question on page 153;

Harmon's refusal No. 14, first question on page 154;

Harmon's refusal No. 15, second question on page 154;

Harmon's refusal No. 16, ninth question on page 155;

Harmon's refusal No. 17, tenth question on page 155;

Harmon's refusal No. 18, eleventh question on page 155;

Harmon's refusal No. 19, last question on page 155;

Harmon's refusal No. 20, first question on page 156;

Harmon's refusal No. 21, second question on page 156;

Harmon's refusal No. 22, third question on page 156;

Harmon's refusal No. 23, fourth question on page 156;

Harmon's refusal No. 24, fifth question on page 156;

Harmon's refusal No. 25, sixth question on page 156;

Harmon's refusal No. 26; seventh question on page 156;

Harmon's refusal No. 27, eighth question on page 156;

Harmon's refusal No. 28, fifteenth question on page 157;

Harmon's refusal No. 29, sixteenth question on page 157.

Refusal to state whether the defendant corporations manufacturing hanging paper have any arrangement among themselves or with the General Paper Company, whereby the price is equalized which they receive from the General Paper Company for hanging paper.

Nelson's refusal No. 9, second question on page 116 of the transcript of record in the Nelson case.

Refusals to state whether the defendant corporations manufacturing hanging paper had any arrangement, during the years 1900 to 1905, inclusive, whereby the General Paper Company credited each mill with a fixed price for hanging paper, and

the balance received over and above that fixed price was distributed to the defendant companies manufacturing hanging paper on the basis of their output thereof.

Nelson's refusal No. 10, fourth question on page 116;

McNair's refusal No. 16, first question on page 141 of the transcript of record in the Nelson case.

Refusals to state whether such an arrangement has ever existed or been carried out among any of the defendant companies manufacturing hanging paper, during any of those years.

Nelson's refusal No. 13, last question on page 116;

Nelson's refusal No. 16, fifth question on page 117;

McNair's refusal No. 17, sixth question on page 141, of the transcript of record in the Nelson case.

Refusal to state, if he knew, the basis on which the prices to the defendant companies, or any of them, were equalized, for hanging paper sold through the General Paper Company.

Nelson's refusal No. 11, fifth question on page 116 of the transcript of record in the Nelson case.

Refusal to state whether said prices were in any way equalized.

Nelson's refusal No. 12, sixth question on page 116 of the transcript of record in the Nelson case.

Refusal to state whether he ever attended a meeting of the executive committee, where the above

plan of equalization was discussed, during the years 1900 to 1905, inclusive.

Nelson's refusal No. 14, first question on page 117;

Nelson's refusal No. 16, fifth question on page 117 of the transcript of record in the Nelson case.

Refusal to state whether, at any of those meetings, the price was fixed, for any definite period, to be received by the mills for hanging paper, during the years 1900 to 1905, inclusive.

Nelson's refusal No. 15, second question on page 117;

Nelson's refusal No. 16, fifth question on page 117, of the transcript of record in the Nelson case.

News Print Paper.

Refusal to state if he knows how the prices are fixed to the defendant mills for news print paper.

Nelson's refusal No. 17, sixth question on page 117 of the transcript of record in the Nelson case.

Refusals to state whether there was any arrangement between the General Paper Company and any of the defendant mills, whereby news print paper was sold to or by the General Paper Company for a fixed price, during the period which that company has been the general selling agent.

Nelson's refusal No. 18, last question on page 117;

Bossard's refusal No. 4, fourth question on page 130 of the transcript of record in the Nelson case.

Refusal to state, if he knew, whether that price was less than the final price settled for by the General Paper Company with the defendant mills.

Nelson's refusal No. 19, first question on page 118 of the transcript of record in the Nelson case.

Refusal to state whether the balance over and above that fixed price was divided among the defendant mills.

Nelson's refusal No. 20, second question on page 118 of the transcript of record in the Nelson case.

Refusals to state whether the defendant corporations manufacturing news print paper, or any grade of paper, have had any arrangement, among themselves or with the General Paper Company, during any of the time since the organization of the General Paper Company, whereby the latter allowed each mill a fixed price for such paper, and the balance received over and above that fixed price for such paper was distributed among the defendants manufacturing such paper on the basis of their output thereof.

Nelson's refusal No. 21, third question on page 118;

Nelson's refusal No. 22, fourth question on page 118;

Bossard's refusal No. 2, first question on page 130;

McNair's refusal No. 15, last question on page 140 of the transcript of record in the Nelson case.

Refusals to state whether any such arrangement as the foregoing has ever existed or been carried out, as to news print paper, among these defendants.

Bossard's refusal No. 6, last question on page 130;

McNair's refusal No. 20, last question on page 141, of the transcript of record in the Nelson case.

Refusal to state whether his company had any arrangement with the General Paper Company and the other defendant companies, for fixing the price of news print paper.

Bossard's refusal No. 3, second question on page 130 of the transcript of record in the Nelson case.

Refusals to state whether there was any arrangement whereby the General Paper Company, as general sales agent, equalized or approximately equalized the prices received by the defendant mills for news print paper, during the time the General Paper Company has been the exclusive selling agent of the respective defendant mills.

Nelson's refusal No. 23, fifth question on page 118;

Bossard's refusal No. 5, seventh question on page 130;

Bossard's refusal No. 7, second question on page 131;

McNair's refusal No. 11, third question on page 140;

McNair's refusal No. 12, fourth question on

page 140, of the transcript of record in the Nelson case.

After stating that the General Paper Company, in accordance with the contracts in evidence, deducted its commission of three per cent from sales made for the respective manufacturing corporations defendant, the witnesses refused to state whether the General Paper Company deducted any more than that amount.

Nelson's refusal No. 24, last question on page 118

Nelson's refusal No. 25, first question on page 119;

Bossard's refusal No. 11, eighth question on page 131;

Bossard's refusal No. 12, last question on page 131;

McNair's refusal No. 30, fourth question on page 144, of the transcript of record in the Nelson case.

Refusal to state whether any sum beyond three per cent, deducted by the General Paper Company as above, has been distributed among the defendant mills.

McNair's refusal No. 31, fifth question on page 144 of the transcript of record in the Nelson case.

XVI.

BOOKS OF CONSTITUENT COMPANIES.

Refusals to state whether the books of their respective companies show the amount and kinds or grades of paper manufactured.

Nelson's refusal No. 36, first question on page 125;

Bossard's refusal No. 16, tenth question on page 132;

Bossard's refusal No. 17, last question on page 132;

McNair's refusal No. 1, fourth question on page 138, of the transcript of record in the Nelson case.

Refusals to state whether said books show the kinds or grades of paper manufactured, respectively, and sold through the General Paper Company, during the time the General Paper Company has been the exclusive selling agent for the respective companies.

Nelson's refusal No. 37, second question on page 125;

Bossard's refusal No. 18, first question on page 133;

McNair's refusal No. 21, fifth question on page 142 of the transcript of record in the Nelson case.

Refusals to state whether said books show where said paper has been sold and shipped.

Nelson's refusal No. 38, third question on page 125;

Nelson's refusal No. 43, first question on page 126;

Bossard's refusal No. 18, first question on page 133;

McNair's refusal No. 22, last question on page 142, of the transcript of record in the Nelson case.

Refusals to state whether said books show the prices received by the respective companies for the paper manufactured by them and sold by the General Paper Company or the net amount received therefor.

Nelson's refusal No. 41, sixth question on page 125;

Bossard's refusal No. 19, second question on page 133;

Bossard's refusal No. 22, sixth question on page 133;

McNair's refusal No. 23, first question on page 143 of the transcript of record in the Nelson case.

Refusals to state whether said books show the prices or amounts received for such paper from the General Paper Company, including entries showing the manner in which the amounts received have been equalized among the defendants manufacturing similar grades of paper, during the time the General Paper Company has been the exclusive selling agent for the respective mills.

Nelson's refusal No. 39, fourth question on page 125;

Bossard's refusal No. 20, fourth question on page 133;

Bossard's refusal No. 21, fifth question on page 133;

McNair's refusal No. 24, second question on page 143 of the transcript of record in the Nelson case.

Refusals to state whether said books show the amounts or proportions of the earnings or profits of the General Paper Company received directly or indirectly by the defendant mills respectively, either in the form of dividends, rebates or otherwise, during the time the General Paper Company has been such exclusive selling agent.

Nelson's refusal No. 40, fifth question on page 125;

Bossard's refusal No. 23, seventh question on page 133;

McNair's refusal No. 25, third question on page 143 of the transcript of record in the Nelson case.

Refusals to state whether said books show any agreement or arrangement under which the prices realized by the respective defendant mills, for various grades of paper, have been equalized, and the profits arising from the sale of such paper distributed or apportioned among the defendants manufacturing such paper, during the time the General Paper Company has been such exclusive selling agent.

Nelson's refusal No. 44, eighth question on page 126;

Bossard's refusal No. 24, last question on page 133;

McNair's refusal No. 26, last question on page 143 of the transcript of record in the Nelson case.

Refusals to produce the books of their respective companies, for inspection by counsel for the Government and use in evidence.

Nelson's refusal No. 45, last question on page 126;

Bossard's refusal No. 25, eighth question on page 134.

McNair's refusal No. 27, top of page 144 of the transcript of record in the Nelson case.

XVII.

ORDERS SECURED BY THE GENERAL PAPER COMPANY FOR THE GRAND RAPIDS PULP & PAPER COMPANY, AND WRITTEN ACCEPTANCES THEREOF.

Refusal to produce, for the purposes of inspection and use in evidence, the orders secured by the General Paper Company for the Grand Rapids Pulp & Paper Company, and the written acceptances

thereof by the Grand Rapids Company.

Harmon's refusal No. 30, fourth and fifth questions on page 158 of the transcript of record in the Harmon appeal.

XVIII.

DISTRIBUTION OF CONTRACTS.

Refusals to state what has been the basis of distribution or apportionment among the defendant manufacturing companies of contracts made by the General Paper Company with publishers or for the sale of news print paper.

McNair's refusal No. 13, fifth question on page 140;

McNair's refusal No. 14, sixth question on page 140 of the transcript of record in the Nelson case.

XIX.

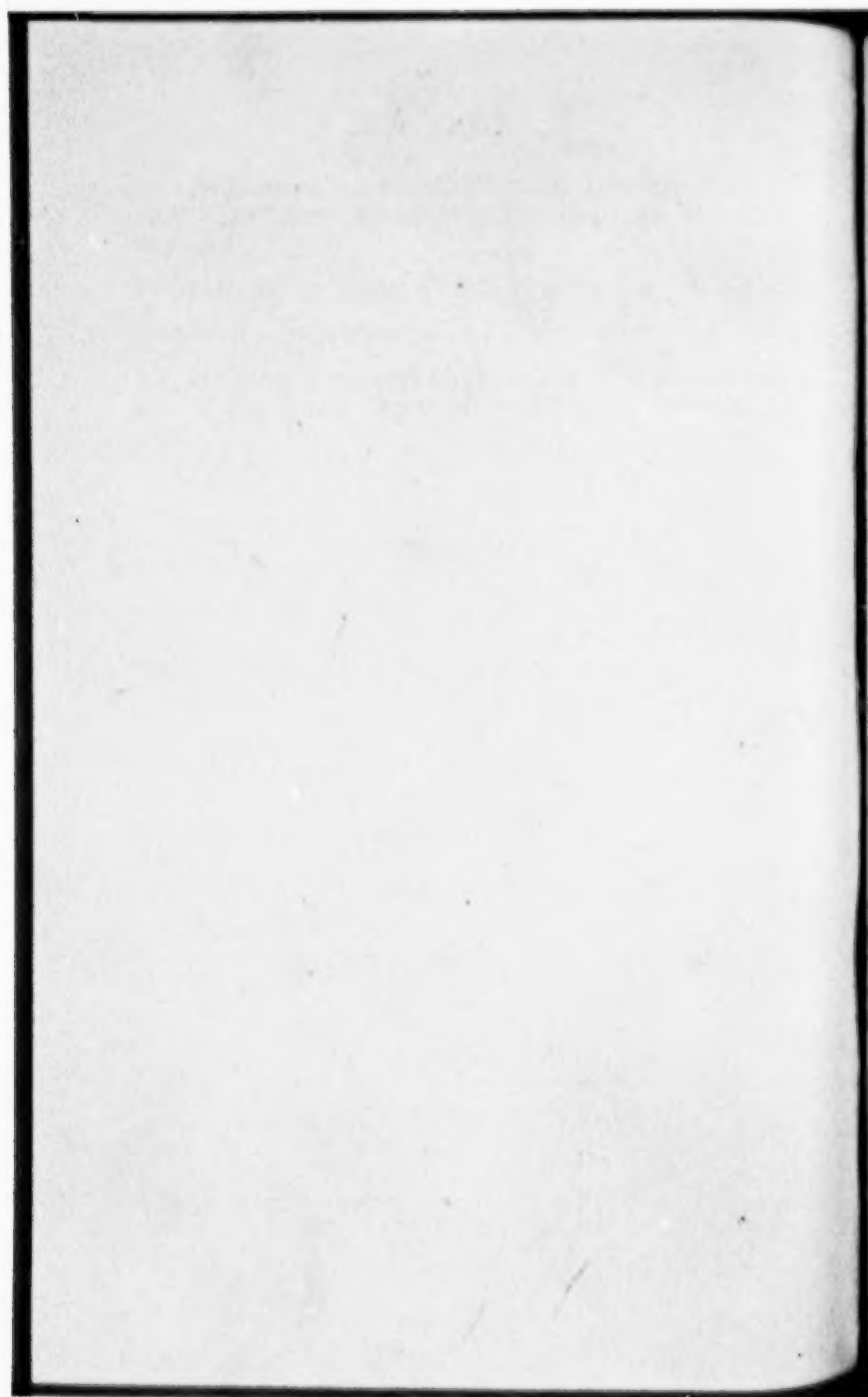
EXCUSES FOR REFUSING TO ANSWER.

Refusal to state whether he refuses to answer on the ground that the testimony will tend to incriminate him.

Alexander's refusal No. 23, last question on page 211 of the transcript of record in the Alexander appeal.

Refusal to state whether he had given all the excuses he desired to give for not answering.

Harmon's refusal No. 31, last question on page 158 of the transcript of record in the Harmon appeal.



Supreme Court of the United States.

No. 381, 382, 383, 384, and 385.—OCTOBER TERM, 1905.

- 381 Lewis M. Alexander, Appellant,
 vs.
 The United States.
- 382 George A. Whiting, Appellant,
 vs.
 The United States.
- 383 William Z. Stuart, Appellant,
 vs.
 The United States.
- 384 General Paper Company, Appellant,
 vs.
 The United States.
- 385 E. T. Harmon and General Paper Company,
 Appellants,
 vs.
 The United States.

} Appeals from the Circuit
Court of the United
States for the Eastern
District of Wisconsin.

[March 12, 1906.]

Mr. Justice McKENNA delivered the opinion of the Court.

At the very beginning we encounter a question of jurisdiction. Are the orders of which the appellants complain appealable? The orders direct the appellants respectively to appear before Robert F. Taylor, special examiner in the case, at the time and place to be designated, and directs each of them to "answer each and every question put to them respectively by the counsel for the complainant, the United States of America," and to produce before such commissioner certain books, papers, records, documents, reports and contracts, "for the purpose of their respective examination in said cause, and for use in evidence of the complaint of the United States of America in said examination." And it is ordered that the complainant's counsel shall have the right to inspect the said books, etc., and to introduce them or any of them in evidence; but, except as necessary for such purposes, the books, etc., to remain in the custody of the appellants.

A brief statement of the proceedings is all that is necessary. The United States by its proper officers brought suit in the Circuit Court of

the United States for the District of Minnesota against the General Paper Company and twenty-three other corporations, defendants, under and pursuant to the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." It is alleged in the bill that the defendants, other than the General Paper Company and the Manufacturers' Paper Company, were engaged in the manufacture of manilla and fibre papers in active competition with one another, and that they entered into an agreement, combination and conspiracy to control, regulate and monopolize, not only the manufacture of news print, manilla, fibre and other papers, but also the distribution and shipment thereof among and throughout the Middle, Southern and Western States. The General Paper Company was the means employed to execute the combination and conspiracy. That company is a corporation organized, the bill alleges, by the other defendants, under the laws of the State of Wisconsin, with a capital stock of \$100,000, divided into one thousand shares, which were distributed among and owned and held by the other defendants, in proportions based upon the average daily output of the mills of each defendant. It is authorized to become at its principal place of business the sales agent of the products of the defendants' mills in the State of Wisconsin and elsewhere. Absolute power is conferred upon it to control and restrict the output of the mills, fix the price of their products, and determine to whom and the terms and conditions upon which such products shall be sold, into what States and places they shall be shipped, and what publishers and customers each mill shall supply.

The Manufacturers' Paper Company, it is alleged, is a New York corporation, with its principal place of business in Chicago, and from about the year 1897 to 1902, acted as the sales agent of various manufacturers of paper for the sale of news print and other papers; that in 1902 it became a party to the combination and conspiracy alleged in the bill and agreed with the General Paper Company not to compete with it in certain territories.

It is admitted that, prior to the formation of the General Paper Company, the other defendants except the Manufacturers' Paper Company, were in active competition. The formation of the General Paper Company is also admitted and that it became, by contract with the defendants who manufacture paper, their selling agent. The defendants deny, however, a purpose to violate the act of July 2, 1890. The violation of that law is the issue in the case, and the bill prays an injunction against the defendants and their officers from doing the acts or executing the purpose charged against them.

In trial of the issue thus made the Circuit Court appointed Robert S. Taylor special examiner, with authority to hear and take testimony within

and without the District of Minnesota, and made an order fixing the time to take the testimony for the United States the 16th of May, 1905, at the city of Milwaukee, State of Wisconsin. The order was duly served on the counsel of the respective parties. Thereupon the United States petitioned the Circuit Court for an order directing the clerk of the Circuit Court to issue a *subpoena duces tecum*. The subpoena was duly issued and served on the appellants as individuals and as officers of certain of the defendant companies. They appeared before the examiner in obedience to the subpoena, but, under the advice of counsel, they refused to permit the use of books or certain parts of them, and refused to answer certain questions put to them, the ground of this action being the immateriality and irrelevancy of the evidence sought to be adduced. The United States then presented a petition to the United States Circuit Court for the District of Wisconsin, which recited the issues in the case and the statement of the questions asked and the parts of the books and documents sought to be used. To this petition the appellants filed separate answers.

The answers may be regarded for our present purpose as identical. They allege the immateriality of the evidence and that its materiality should be established as a condition precedent to its production; that they are officers of the companies, and as such officers, the custodians of the books, papers and documents, and that the same are of interest and value to the company in its business, and the company forbids their production; that the United States seeks evidence to convict the company and the individual appellants of violations of the act of July 2, 1890, to annul the contracts and agreements of the company, and subject it and the other appellants to the penalties prescribed in that act, and to compel the company and the other appellants to furnish evidence against themselves, contrary to the provisions of the Fifth Amendment to the Constitution of the United States, which provides that no person shall be a witness against himself; also contrary to the Fourth Amendment of the Constitution of the United States, which provides that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. It is also said that the alleged acts of the paper company complained of in the original petition of the United States and which the United States is endeavoring to establish would, if committed by the company, be violations of the laws of Wisconsin, and would subject the company to forfeiture of its charter and other penalties under said laws, and to compel it through its officers to produce the books and documents sought would be to compel it to furnish evidence tending to establish that it has violated the law of the State, and such purpose is contrary to the provisions of the Fourth and Fifth Amendments of the Constitution of the United States.

As we have said, the court entered orders requiring the appellants to answer the questions put to them and to produce the books, papers and documents requested. Appeals were allowed to this court. To justify the appeals, appellants contend that the orders of the Circuit Court constitute practically independent proceedings and amount to final judgments. To sustain the contention, *Interstate Commerce Commission v. Brimson*, (154 U. S. 447,) and *Interstate Commerce Commission v. Baird*, (194 U. S. 25,) are cited.

Those cases rested on statutory provisions which do not apply to the proceedings at bar, and, while there may be resemblances to the latter, there are also differences. In a certain sense finality can be asserted of the orders under review, so, in a certain sense, finality can be asserted of any order of a court. And such an order may coerce a witness, leaving to him no alternative but to obey or be punished. It may have the effect and the same characteristic of finality as the orders under review, but from such a ruling it will not be contended there is an appeal. Let the court go farther and punish the witness for contempt of its order, then arrives a right of review, and this is adequate for his protection without unduly impeding the progress of the case. Why should greater rights be given a witness to justify his contumacy when summoned before an examiner than when summoned before a court? Testimony, at times, must be taken out of court. In instances like those in the case at bar the officer who takes the testimony, having no power to issue process, is given the aid of the clerk of a court of the United States; having no power to enforce obedience to the process or to command testimony, he is given the aid of the judge of the court whose clerk issued the process, and if there be disobedience of the process, or refusal to testify or to produce documents, such judge may "proceed to enforce obedience . . . or punish disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court." (Sections 868, 869, Revised Statutes.) [This power to punish being exercised the matter becomes personal to the witness and a judgment as to him. Prior to that the proceedings are interlocutory in the original suit.] This is clearly pointed out by Circuit Judge Van Deventer, disallowing an appeal from an order like those under review, in the case of *Nelson v. United States*, (No. 490,) in error to the Circuit Court of the United States for the District of Minnesota. The learned judge said:

"I am of opinion that the mere direction of the court to the witnesses to answer the questions put to them and to produce the written evidence in their possession is not a final decision; that it more appropriately is an interlocutory ruling or order in the principal suit, and that if the witnesses refuse to comply with it and the court then exercises its authority either to punish them or to coerce them into compliance that will give rise to another case or cases to which the witnesses will be parties on the

one hand and the Government, as a sovereign vindicating the dignity and authority of one of its courts, will be a party on the other hand. I have no doubt that a judgment adverse to the witnesses in that proceeding or case will be a final decision and will be subject to review by writ of error, but not by appeal. My opinion is also that the parties to the principal suit cannot appeal or obtain a writ of error from that decision."

See also *Logan v. Penn. R. R. Co.*, (132 Pa. St. 403, 410.)

This court having no jurisdiction, the appeals must be dismissed, and

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.